



# General Assembly

Distr.: General  
15 January 2021

Original: English

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## Seventy-fifth session

Agenda item 148

### United Nations common system

## Initial review of the jurisdictional set-up of the United Nations common system

### Report of the Secretary-General

#### *Summary*

In its resolution [74/255 B](#), the General Assembly requested the Secretary-General, “in his capacity as Chair of the United Nations System Chief Executives Board for Coordination, to conduct a review of the jurisdictional set-up of the common system and submit the findings of the review and recommendations to the General Assembly as soon as practicable”. The present report sets out the preliminary findings of the initial review conducted pursuant to resolution [74/255 B](#).

The present report consists of four sections. Section I provides an overview of the establishment and evolution of the two tribunal systems. Section II examines past efforts to address the challenges of having two tribunal systems for the United Nations common system. Section III contains a survey of the jurisprudence of the International Labour Organization Administrative Tribunal and the United Nations Tribunals on decisions and recommendations of the International Civil Service Commission from 1975 to 2016. Section IV sets out options to address the issue of inconsistent implementation of the decisions and recommendations of the Commission, and the preliminary views of stakeholders as to whether those options should be further explored.

The General Assembly is requested to take note of the present report and to provide any observations or guidance to the Secretary-General on the further development of any of the options presented.



## Introduction

1. In its resolution [74/255](#) B, the General Assembly requested the Secretary-General, “in his capacity as Chair of the United Nations System Chief Executives Board for Coordination, to conduct a review of the jurisdictional set-up of the common system and submit the findings of the review and recommendations to the General Assembly as soon as practicable”.<sup>1</sup> The present report sets out the preliminary findings of the initial review conducted pursuant to that resolution.

2. The scope of the initial review was informed by the context in which the request was made. The General Assembly requested the review in its resolution on the United Nations common system, following its consideration of the report of the International Civil Service Commission (ICSC) for 2019. The Commission drew the attention of the General Assembly to a series of judgments issued by the International Labour Organization Administrative Tribunal (ILOAT) in 2019. In those judgments, which are final and without appeal, the ILO Administrative Tribunal set aside the payment of post adjustment amounts calculated in accordance with post adjustment multipliers established by ICSC for Geneva in 2017. The ILO Administrative Tribunal reached this outcome principally on the ground that under its statute, the Commission had authority only to issue recommendations and not binding decisions on post adjustment multipliers. The report also noted that challenges to the Geneva post adjustment multiplier were pending before the United Nations Dispute Tribunal.<sup>2</sup> The Assembly expressed “concern at the application of two concurrent post adjustment multipliers in the United Nations common system” in Geneva and noted that the “organizations of the United Nations common system face the challenge of having two independent administrative tribunals with concurrent jurisdiction among the organizations of the common system”.<sup>3</sup> Moreover, the Assembly “reaffirm[ed] the authority of the [...] Commission to continue to establish post adjustment multipliers [...] under article 11 (c) of [its] statute”.<sup>4</sup>

3. The request by the General Assembly for the review was understood by the Secretariat of the United Nations as not inviting a broad review of the overall functioning of the two tribunal systems. Accordingly, the review was focused on how the coexistence of two tribunal systems (the International Labour Organization Administrative Tribunal and the United Nations Tribunals, currently comprising the United Nations Dispute Tribunal and the United Nations Appeals Tribunal), affects consistency in the implementation of ICSC decisions and recommendations. The review does not examine judgments that are the subject of ongoing litigation or any issues that may be raised during such litigation. The review does not cover areas unrelated to ICSC matters where there may also be divergence in the jurisprudence of the tribunals.

4. In July 2020, the United Nations System Chief Executives Board for Coordination (CEB) principals were informed of the commencement of the review, which would be undertaken under the coordination of the Under-Secretary-General for Management Strategy, Policy and Compliance and the supervision of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel. The principals of member organizations of CEB and other organizations of the United

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<sup>1</sup> Resolution [74/255](#) B, para. 8.

<sup>2</sup> See [A/74/30](#), citing International Labour Organization Administrative Tribunal, judgment Nos. 4134 to 4138. In July 2020, the United Nations Dispute Tribunal had rendered its judgments (judgment Nos. UNDT/2020/129 to 133) on the Geneva post adjustment confirming the authority of the International Civil Service Commission (ICSC) to establish post adjustment multipliers and the appeal of these is currently pending before the United Nations Appeals Tribunal.

<sup>3</sup> Resolution [74/255](#) B, paras. 7 and 8.

<sup>4</sup> Resolution [74/255](#) A, para. 1.

Nations common system were requested to designate focal points for the review. Notification of the review was also sent to the High-level Committee on Management, the networks of Legal Advisers for the United Nations system, the three staff federations (Coordinating Committee for International Staff Unions and Associations of the United Nations System, the Federation of International Civil Servants' Associations and the United Nations International Civil Servants Federation), the International Labour Organization Administrative Tribunal and United Nations Tribunals and their registrars, the secretariat of the International Civil Service Commission, the entities that have accepted the jurisdiction of the two tribunal systems, the Internal Justice Council and the Office of Administration of Justice.

5. The focal points for the United Nations common system organizations, the staff federations and other stakeholders were briefed on the review and provided access to the source documents that formed the basis for the review. Additional briefings were conducted during meetings of the networks of Legal Advisers and the High-level Committee on Management.

6. The draft report was prepared by the Secretariat of the United Nations in close consultation with the International Labour Office, as the custodial institution of the International Labour Organization Administrative Tribunal. The draft was circulated twice, on 2 October and on 25 November 2020. A meeting of the networks of Legal Advisers to discuss the first draft and a further briefing for the staff federations were held in October 2020. Comments provided within six weeks of the circulation of the first draft and two weeks of the circulation of the second draft were taken into account. Upon the finalization of the report, it was sent to CEB principals, who considered and took note of the report. In view of the significant number of stakeholders participating in the consultation process, it is not possible to present the detailed views of all stakeholders in the present report. For stakeholders who indicated a preference to set out their separate views in full, those positions can be found at: <https://www.un.org/management/initial-review-jurisdictional-setup>.

7. The judges of the International Labour Organization Administrative Tribunal, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal were invited to provide observations on the report. The ILO Administrative Tribunal judges and the United Nations Appeals Tribunal judges declined to provide observations. The comments of the United Nations Dispute Tribunal judges are attached in annex I.

8. Similarly, the Commission was invited to provide observations on the report. ICSC declined to provide observations in the light of the preliminary stage of the review.<sup>5</sup>

9. The present report consists of four sections. Section I provides an overview of the establishment and evolution of the two tribunal systems. Section II examines past efforts to address the challenges of having two tribunal systems for the United Nations common system. Section III contains a survey of the jurisprudence of the International Labour Organization Administrative Tribunal and the United Nations tribunals on decisions and recommendations of the Commission from 1975 to 2016. Section IV sets out options to address the issue of inconsistent implementation of ICSC decisions and recommendations, and the preliminary views of stakeholders as to whether those options should be further explored. The General Assembly is requested to take note of the present report and to provide any observations or guidance to the Secretary-General on the further development of any of the options presented.

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<sup>5</sup> In its resolution [75/245](#) of 31 December 2020, the General Assembly invited the Commission to provide its views on the review of the jurisdictional set-up of the common system. The Commission will be discussing the review at its next session and issue its views shortly thereafter.

## **I. Establishment and evolution of the tribunal systems of the International Labour Organization and the United Nations**

### **A. International Labour Organization Administrative Tribunal**

10. In September 1927, the Assembly of the League of Nations established the League of Nations Administrative Tribunal, with competence to hear “complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the Secretariat [of the League of Nations] or of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case”. Upon the dissolution of the League of Nations in April 1946, the International Labour Organization (ILO) assumed responsibility for maintaining the Administrative Tribunal.<sup>6</sup> Consequently, the statute of the League of Nations Administrative Tribunal was amended by replacing the words “League of Nations Administrative Tribunal” wherever they occurred with the words “International Labour Organization Administrative Tribunal”.

11. The statute of the International Labour Organization Administrative Tribunal was provisionally adopted by the International Labour Conference in October 1946 and affirmed in July 1947. While the content of the statute of the League of Nations Administrative Tribunal was maintained for the most part, the competence of the ILO Administrative Tribunal was extended to hear disputes relating to ILO pensions and to the execution of certain contracts (where ILO was a party and the contract provided for the competence of ILOAT). In addition, the statute included a procedure enabling a defendant organization to challenge a judgment of the ILO Administrative Tribunal, on limited grounds, through the advisory procedure of the International Court of Justice.<sup>7</sup>

12. As set out in the statute approved in 1946, the competence of the ILO Administrative Tribunal to review complaints alleging non-observance of the terms of appointment or applicable staff regulations was limited to the International Labour Office. Over time, its competence has been extended to other international organizations.

13. In 1949, the Conference amended the statute of the ILO Administrative Tribunal to extend the Tribunal’s competence to complaints filed by the staff of any other intergovernmental international organization approved by the Governing Body of the International Labour Office. This amendment followed a request by the World Health Organization to seek recourse to the ILO Administrative Tribunal. The Office stated that the extension of ILOAT competence in this manner was “in line with the Organization’s mission to make an independent and reliable settlement procedure generally available to a special category of workers, namely international civil servants, who did not have legal protection at the national level.”<sup>8</sup>

14. In 1998, the Conference further amended the scope of ILOAT competence by extending the possibility to recognize the Tribunal’s jurisdiction to international organizations that were not intergovernmental in character, provided that they fulfilled several conditions. With the 1998 amendment to the ILOAT statute, an

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<sup>6</sup> Resolution for the dissolution of the League of Nations, twenty-first session of the Assembly of the League of Nations, 18 April 1946, para. 15.

<sup>7</sup> Resolutions adopted by the International Labour Conference at its 29th session, p. 2; and resolutions and various texts adopted by the International Labour Conference at its 30th session, p. 21. The mechanism of recourse to the International Court of Justice is further discussed in section IV of the present report.

<sup>8</sup> Record of proceedings of the 32nd session of the International Labour Conference, pp. 288 and 435; International Labour Office, document GB.271/PFA/11/2.

international organization (whether intergovernmental or not) can accept the jurisdiction of the ILO Administrative Tribunal, with the approval of the Governing Body of the International Labour Office, so long as such organization is clearly international in character, having regard to its membership, structure and scope of activity; has concluded a headquarters agreement with the host country providing for immunity from legal process; has functions of a permanent nature at the international level; and offers, in the opinion of the Governing Body, sufficient guarantees of capacity to carry out its functions as well as guarantees of compliance with ILOAT judgments.<sup>9</sup>

15. The first organization to be admitted to membership of the ILO Administrative Tribunal under the expanded scope of the Tribunal's competence was the International Federation of Red Cross and Red Crescent Societies, while the most recent was the Pacific Community, in November 2020.

16. As of 1 January 2020, the jurisdiction of the ILO Administrative Tribunal has been accepted by 60 international organizations – including ILO – with a total of 73,557 staff members. In addition, as noted above, in November 2020, the Governing Body approved the acceptance by the Pacific Community of the jurisdiction of the ILO Administrative Tribunal. The organizations are listed in annex II to the present report. Of the 60 organizations:

(a) 56 are intergovernmental international organizations and 4 are non-intergovernmental international organizations;

(b) The 56 intergovernmental organizations include 11 organizations of the United Nations common system,<sup>10</sup> 3 organizations that voluntarily apply the United Nations common system of salaries, allowances and other conditions of service,<sup>11</sup> and 6 European regional organizations.

17. Since 2016, seven organizations have withdrawn their recognition of the jurisdiction of the ILO Administrative Tribunal. Two organizations accepted the jurisdiction of the United Nations Appeals Tribunal, namely the World Meteorological Organization (WMO) and the International Fund for Agricultural Development (IFAD). Two organizations withdrew because their activities ceased, namely the Centre for the Development of Enterprise and the Agency for International Trade Information and Cooperation. As for the three remaining organizations, the Permanent Court of Arbitration established an arbitration mechanism to resolve staff disputes; the Intergovernmental Organisation for International Carriage by Rail accepted the jurisdiction of the Administrative Tribunal of the Council of Europe, and the Technical Centre for Agricultural and Rural Cooperation established its own administrative tribunal. In some cases, the decision to withdraw from the ILO Administrative Tribunal followed unfavourable judgments ordering the reinstatement

<sup>9</sup> International Labour Office, document GB.271/PFA/11/2.

<sup>10</sup> The following organizations confirmed their acceptance of the statute of the International Civil Service Commission: Food and Agriculture Organization of the United Nations (FAO), including the World Food Programme; International Atomic Energy Agency; ILO; International Telecommunication Union; Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization; United Nations Educational, Scientific and Cultural Organization; United Nations Industrial Development Organization; Universal Postal Union; World Health Organization, including the Joint United Nations Programme on HIV/AIDS; World Intellectual Property Organization; and World Tourism Organization. See <https://icsc.un.org/Home/CommonSystem>.

<sup>11</sup> International Criminal Court; International Organization for Migration; and Organisation for the Prohibition of Chemical Weapons.

of unlawfully dismissed officials.<sup>12</sup> In response to these withdrawals, ILOAT judges have expressed the view that:

[A]ny unilateral decision by an international organization to withdraw from a tribunal's jurisdiction raises important legal and policy issues, as such a decision might be perceived as a kind of "forum shopping"... The fact that an organization can decide to withdraw its recognition of a tribunal's jurisdiction simply because it disagrees with that tribunal's case law weakens the appearance of independence and impartiality of both the tribunal from which it wishes to withdraw and the one it wishes to join.[...] Withdrawing from the Tribunal's jurisdiction based on dissatisfaction with its judgments would violate good faith, ...[is] unacceptable and contrary to basic requirements of the rule of law.<sup>13</sup>

18. The statute of the ILO Administrative Tribunal may be amended by the Conference, which has a tripartite structure composed of representatives of governments, employers and workers, after consultation with the Tribunal. All member organizations are also consulted and, through them, their staff representative bodies, which ensures that the interests of the administrations and staff are duly considered. The Rules of the ILO Administrative Tribunal are drawn up by the Tribunal.<sup>14</sup> Other amendments made to the ILOAT statute over the years have included:<sup>15</sup>

(a) In 1986, adding one deputy judge, for a total of four deputy judges;

(b) In 1992, removing the distinction between judges and deputy judges; providing for the possibility for the Tribunal, in exceptional circumstances, to sit with five or seven judges, instead of the default three judge panels; and deleting transitional provisions relating to the terms of judges appointed in 1940;

(c) In 2008, providing for the discretion of the ILO Administrative Tribunal to hold oral proceedings;

(d) In 2016, removing the procedure for seeking advisory opinions of the International Court of Justice; providing for applications for interpretation, execution or review of a judgment; removing outdated references to the pension fund of ILO; and making various editorial revisions;

(e) In 2019, providing that ILOAT judges shall be considered "officials of the International Labour Organization other than officials of the International Labour Office" in order to align their status with the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.

19. Regarding the composition of the ILO Administrative Tribunal, the statute provides that the Tribunal "shall consist of seven judges who shall all be of different nationalities". As a matter of long-established practice, members of ILOAT are selected from among persons who hold or have held high judicial office. They must be fluent in either French or English, the two official languages of the ILO

<sup>12</sup> See judgments Nos. 3348 and 3723 in the case of World Meteorological Organization (WMO); judgments Nos. 3437 and 3719, in the case of the Technical Centre for Agricultural and Rural Cooperation; and judgment No. 3674, in the case of the Intergovernmental Organisation for International Carriage by Rail. Contrary to the International Labour Organization Administrative Tribunal, the United Nations Appeals Tribunal may order a specific performance such as reinstatement but it is required at the same time to fix monetary compensation (normally limited to two years' salary) which the Secretary-General may decide to pay as an alternative.

<sup>13</sup> International Labour Office, document GB.335/PFA/12/1, paras. 2, 13 and 14.

<sup>14</sup> Statute of the International Labour Organization Administrative Tribunal (ILO Administrative Tribunal), arts. X and XI.

<sup>15</sup> Resolutions adopted by the International Labour Conference at its 72nd session (p. 27); 79th session (p. 19); 97th session (p. 40); 105th session (sect. IX); and 108th session (sect. VII).

Administrative Tribunal. The judges are appointed for a period of three years, renewable by the Conference.<sup>16</sup>

20. Over the years, the ILO Administrative Tribunal has had judges of 20 different nationalities, from every geographical region. ILOAT is composed of judges from four continents, and two of the seven judges are women. Among the many jurists who have served with the ILO Administrative Tribunal were Julio Barberis (Argentina), Mohammed Bedjaoui (Algeria), Lord Devlin (United Kingdom of Great Britain and Northern Ireland), Jean-François Egli (Switzerland), Edilbert Razafindralambo (Madagascar), José Maria Ruda (Argentina) and Mary G. Gaudron (Australia), who later became a member of the Redesign Panel on the United Nations system of administration of justice.

21. The ILO Administrative Tribunal normally meets twice a year, for a period of three to four weeks, at ILO headquarters in Geneva. It is worth noting that the 2020 sessions were held virtually in the light of the coronavirus disease (COVID-19) pandemic. At each session, it delivers approximately 90 judgments. As of November 2020, ILOAT had held 131 sessions. Cases are normally decided by a panel of three judges but may, in exceptional cases, be decided by five or seven judges. Decisions of the ILO Administrative Tribunal are taken by a majority vote and are without appeal.<sup>17</sup>

22. As of January 2021, the ILO Administrative Tribunal has delivered over 4,300 judgments. The entire case law of the ILO Administrative Tribunal is available, in English and French, in a fully searchable database: [www.ilo.org/dyn/triblex](http://www.ilo.org/dyn/triblex). ILOAT is serviced by a Registry, comprising a Registrar and an Assistant Registrar, together with a team of seven legal officers, two linguists and four administrative assistants.

23. The annual total operational cost of the ILO Administrative Tribunal over the years 2018 and 2019, including the costs of maintaining a permanent Registry and holding two sessions each year, was a little more than \$3 million. It is financed from three sources: the regular budget of the International Labour Office; the overhead cost, financed by all organizations under the Tribunal's jurisdiction and apportioned by the number of their staff; and the session cost, calculated after each session and covered by the organizations concerned by the judgments rendered by the Tribunal, as illustrated in the detailed breakdown below:

(a) The regular budget of the International Labour Office covers the salary of the Registrar, a few months of secretarial support and minor non-staff costs. Those expenditures totalled \$334,385 in 2018 and \$326,563 in 2019;

(b) The overhead cost covers the maintenance of the Tribunal's database and website, as well as ordinary secretarial and legal support services. The cost amounted to \$638,641 in 2018 and \$648,561 in 2019;

(c) The session cost covers the judges' honoraria (4,500 Swiss francs per judgment adopted, shared among the members of the panel hearing the case – a rate that was last adjusted in 2006),<sup>18</sup> their travel and subsistence expenses in accordance with United Nations common system standards; legal and administrative support of the Registry staff; the cost of the public delivery of judgments; and translation costs (all judgments are translated and are available in English and French). The costs in 2018 and 2019 amounted to a little more than \$1.1 million per session. This cost is then divided by the number of judgments adopted and the invoice sent for each

<sup>16</sup> Statute of the ILO Administrative Tribunal, art. III.

<sup>17</sup> Ibid., arts. IV and VI.

<sup>18</sup> International Labour Office, document GB.294/PFA/18/2.

judgment to the organization concerned (over the past four sessions, the cost varied between \$16,500 and \$18,100 per judgment).

24. The ILO Administrative Tribunal is hosted at ILO headquarters. The International Labour Office provides the Tribunal with office and meeting space and related administrative services at no charge.

## **B. United Nations tribunals**

### *United Nations Administrative Tribunal*

25. Upon adoption of its resolution on the organization of the Secretariat, in February 1946, the General Assembly authorized the Secretary-General to appoint an advisory committee to draft a statute for an administrative tribunal. The Statute of the United Nations Administrative Tribunal was adopted by the General Assembly, with effect from 1 January 1950.<sup>19</sup>

26. The United Nations Administrative Tribunal was competent to hear complaints alleging “non-observance of contracts of employment ... or of the terms of appointment” of staff members of the Secretariat of the United Nations, including staff pension regulations. It was composed of seven members appointed by the General Assembly for 3-year terms.<sup>20</sup>

27. The Statute of the United Nations Administrative Tribunal was amended over time to address the following matters:<sup>21</sup>

(a) In 1953, capping compensation at two years’ net base salary and providing for a remand of a case to order a correction of procedure;

(b) In 1955, allowing for a revision of a judgment based on clerical errors or new facts, and adding a procedure for requesting a review of a United Nations Administrative Tribunal judgment by the International Court of Justice;

(c) In 1995, removing the procedure for requesting the International Court of Justice to review United Nations Administrative Tribunal judgments;

(d) In 1997, allowing other international organizations to accept the jurisdiction of the United Nations Administrative Tribunal and incorporating the competence of the Tribunal to hear complaints regarding the non-observance of the Regulations of the United Nations Joint Staff Pension Fund. With regard to the latter issue, the Regulations of the Pension Fund had already been revised in 1955 to provide for the competence of the United Nations Administrative Tribunal;

(e) In 2000, requiring members of the United Nations Administrative Tribunal to have “legal qualifications and experience”, extending their terms from three to four years, providing that a member could only be re-appointed once, and permitting a case to be considered by the whole Tribunal;

(f) In 2003, requiring members of the United Nations Administrative Tribunal to have “judicial or other relevant legal experience in the field of administrative law or its equivalent”;

(g) In 2005, requiring members of the United Nations Administrative Tribunal to have “judicial experience in the field of administrative law or its equivalent within their national jurisdiction”, deleting the reference to “other relevant legal experience”.

<sup>19</sup> Resolutions 13 (I) and 351 (IV).

<sup>20</sup> Statute of the United Nations Administrative Tribunal.

<sup>21</sup> Resolutions 782 (VIII); 955 (X); 957 (X); 50/54; 52/166; 55/159; 58/87; and 59/283.

28. A review of the United Nations Administrative Tribunal, its operations and Statute began in the 1980s as a result of two initiatives. First, there were efforts to explore the harmonization of the statutes of the United Nations Administrative Tribunal and the ILO Administrative Tribunal, as further discussed in section II. In addition, in the context of a resolution adopted in 1985 on the composition of the Secretariat, the General Assembly requested the Secretary-General to “streamline the appeals procedures”. The reference to “appeals” primarily related to the system of peer review for reviewing challenges to administrative and disciplinary decisions, involving the Joint Appeals Board and the Joint Disciplinary Committee (“joint bodies”), before such challenges proceeded to the United Nations Administrative Tribunal.<sup>22</sup>

29. In 1986, the Joint Inspection Unit (JIU) issued a report on the administration of justice in the United Nations, proposing the creation of an Office of the Administration of Justice and an Office of the Ombudsman, as well as the establishment of a two-tiered judicial system. From 1987 to 1990, the Secretary-General prepared reports on the establishment of an Ombudsman, the operations of the joint bodies, the Panel of Counsel, the disciplinary process and grievance panels. In 1994 and 1995, in further reports of the Secretary-General, additional proposals for an early reconciliation and dispute resolution process, administrative review, an arbitration board and the professionalization of the joint bodies were discussed.<sup>23</sup>

30. From 1987 to 1994, the General Assembly requested the Secretary-General to improve the efficiency of the joint bodies, and to undertake a comprehensive review of the system of administration of justice. In 1996, the General Assembly invited the Sixth Committee to consider the proposals of the Secretary-General. No further action was taken on the reports of the Secretary-General.<sup>24</sup>

31. The Joint Inspection Unit issued three reports on the administration of justice at the United Nations, in 2000, 2002 and 2004.<sup>25</sup> In 2000, JIU recommended that: (a) United Nations Administrative Tribunal members should have judicial experience; (b) the United Nations Administrative Tribunal should be empowered to order specific performance (including reinstatement and rescission of contested decisions) without providing for compensation as an alternative remedy; and (c) the cap on compensation should be removed. In 2004, JIU reiterated these recommendations, indicating that on all three issues, the United Nations Administrative Tribunal should bring its statute and practice in line with that of the ILO Administrative Tribunal and that in so doing, the main differences between the United Nations Administrative Tribunal and the ILO Administrative Tribunal would be addressed. The Joint Inspection Unit concluded that unification of the Tribunals did not appear “achievable in the short term for a number of reasons, including the strong opposition to it by staff of both the United Nations and the ILO. Neither would such unification achieve, as has been stressed in previous reports, any significant benefits or efficiency gains”.<sup>26</sup> It did not reiterate its recommendations in its reports from 2000 or 2002 regarding the revival of the advisory function of the International Court of Justice, nor regarding the study to explore the establishment of a panel to review judgments of the ILO Administrative Tribunal and the United Nations Administrative Tribunal.

32. In 2005, the General Assembly requested the Secretary-General to form a panel of external and independent experts to consider redesigning the system of

<sup>22</sup> Resolution 40/258 A, para. 7.

<sup>23</sup> See A/41/640, A/C.5/42/28, A/C.5/43/25, A/C.5/45/11, A/C.5/49/13, A/C.5/49/60 and A/C.5/49/60/Add.1, and A/C.5/50/2.

<sup>24</sup> Resolutions 42/220 B, 43/224 B, 44/185 B, 45/239 B, 47/226, 49/222 and 50/240.

<sup>25</sup> See A/55/57, A/57/441 and A/59/280.

<sup>26</sup> See A/59/280, para. 10.

administration of justice. The Redesign Panel on the United Nations system of administration of justice began its work in February 2006 and submitted its report to the General Assembly in July 2006. The Redesign Panel concluded that the “United Nations internal justice system is outmoded, dysfunctional and ineffective and that it lacks independence”. Its reference to the “internal justice system” related not just to the United Nations Administrative Tribunal, but also to the joint bodies, whose independence was not guaranteed by virtue of being composed of staff members acting in an advisory capacity to the Secretary-General. The Panel further criticized the constraints placed on the authority of the United Nations Administrative Tribunal to order specific performance and compensation for sometimes resulting in inadequate compensation and thus being inconsistent with the rule of law. Given the defects and limitations of the formal justice system, the Redesign Panel recommended the replacement of the joint bodies and the establishment of a two-tiered system of justice.<sup>27</sup>

*United Nations Dispute Tribunal and United Nations Appeals Tribunal*

33. In April 2007, the General Assembly established a two-tiered system for the administration of justice, with the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. The statutes of the two Tribunals were adopted the following year and the new system became operational on 1 July 2009. The United Nations Administrative Tribunal was abolished on 31 December 2009.<sup>28</sup>

34. The United Nations Dispute Tribunal has competence over applications challenging an “administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms ‘contract’ and ‘terms of appointment’ include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance”. The competence of the United Nations Dispute Tribunal also extends to an administrative decision imposing a disciplinary measure.<sup>29</sup>

35. The United Nations Appeals Tribunal is competent to hear appeals against United Nations Dispute Tribunal judgments, where there has been excess of or failure to exercise jurisdiction, an error on a question of law, a procedural error affecting the contested decision, or a factual error resulting in a manifestly unreasonable decision. The United Nations Appeals Tribunal also has competence to hear appeals against a “decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund”.<sup>30</sup>

36. Applications challenging administrative decisions of the Secretariat or its funds and programmes are filed against the Secretary-General. Specialized agencies and other entities that participate in the United Nations common system may accept the jurisdiction of both the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, or just the United Nations Appeals Tribunal.<sup>31</sup> Acceptance of the jurisdiction of the tribunals requires the conclusion of a special agreement between the Secretary-General and the head of the concerned agency, organization or entity. Furthermore, as an appellate tribunal, the United Nations Appeals Tribunal requires that organizations wishing to accept its jurisdiction have a neutral first instance

<sup>27</sup> Resolution 59/283; and A/61/205.

<sup>28</sup> Resolutions 61/261, 62/228 and 63/253.

<sup>29</sup> Statute of the United Nations Dispute Tribunal, art. 2 (resolution 63/253, annex I).

<sup>30</sup> Statute of the United Nations Appeals Tribunal, art. 2 (resolution 63/253, annex II).

<sup>31</sup> Notwithstanding participation in the United Nations common system, organizations may be subject to their respective staff regulations and rules, administrative issuances, policies and procedures.

review process. Beginning in 2019, the United Nations Appeals Tribunal has declined to review cases where it considered that there was no prior review by a neutral first instance process and has remanded cases to the organizations for such a review to be conducted.<sup>32</sup>

37. As of 1 January 2020, the jurisdiction of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, or just the United Nations Appeals Tribunal, has been accepted by 16 entities, with a total of 77,920 staff members.<sup>33</sup> Among the 16 entities:

(a) 14 are part of the United Nations common system<sup>34</sup> and two voluntarily apply the United Nations common system of salaries, allowances and other conditions of service;<sup>35</sup>

(b) Six (United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), International Civil Aviation Organization (ICAO), IFAD, International Maritime Organization (IMO), International Seabed Authority and International Tribunal for the Law of the Sea) have accepted only the jurisdiction of the United Nations Appeals Tribunal and not of the United Nations Dispute Tribunal.

38. The General Assembly may amend the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which establish their own rules of procedure, subject to approval by the General Assembly. The statutes of the Tribunals have each been amended four times:<sup>36</sup>

(a) In 2011, the statute of the United Nations Appeals Tribunal was amended to extend the deadline for appealing United Nations Dispute Tribunal judgments from 45 days to 60 days and to establish a 30-day deadline for appealing interlocutory orders;

(b) In 2014, both statutes were amended to clarify that: (i) compensation for harm could only be ordered where the harm was “supported by evidence”; and (ii) rescission, specific performance and compensation could be ordered separately or collectively. Both statutes were also amended to refer to the binding nature of judgments and orders, and the suspensory effect of appeals. The statute of the United Nations Appeals Tribunal was amended to allow for consideration of relevant academic experience in the appointment of judges;

(c) In 2015, both statutes were amended to establish that judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall have the

<sup>32</sup> Statute of the United Nations Dispute Tribunal, art. 2; Statute of the United Nations Appeals Tribunal, art. 2; and *Spinardi v. IMO* (judgment No. 2019-UNAT-957).

<sup>33</sup> This reflects numbers in A/75/591 as of 31 December 2019 (77,620 staff members) and 300 staff members for International Maritime Organization (IMO); it does not include staff members of the International Civil Aviation Organization (ICAO), the International Fund for Agricultural Development (IFAD), the International Seabed Authority, the International Tribunal for the Law of the Sea and WMO.

<sup>34</sup> The following organizations and entities confirmed their acceptance of the statute of ICSC, either individually or through the Secretariat: United Nations; United Nations Children’s Fund; United Nations Development Programme; United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women); United Nations Population Fund; United Nations Office for Project Services; United Nations Relief and Works Agency for Palestine Refugees in the Near East (applies the United Nations common system in respect of international staff only and not national staff); International Civil Aviation Organization (ICAO); International Maritime Organization (IMO); International Seabed Authority; International Trade Centre; International Tribunal for the Law of the Sea; Office of the United Nations High Commissioner for Refugees and WMO. See <https://icsc.un.org/Home/CommonSystem>.

<sup>35</sup> International Fund for Agricultural Development and International Court of Justice.

<sup>36</sup> Resolutions 66/237; 69/203; 70/112; 71/266; and 73/276.

status of “officials other than Secretariat officials under the Convention on the Privileges and Immunities of the United Nations”;

(d) In 2016, both statutes were amended to authorize the President of each Tribunal to monitor the timely delivery of judgments. The United Nations Dispute Tribunal statute was amended to add two new criteria for the selection of judges: impartiality and fluency in English or French;

(e) In 2018, the United Nations Dispute Tribunal statute was amended to add four new half-time judicial positions, which replaced the three ad litem judicial positions.

39. In 2013, the General Assembly requested the Secretary-General to establish a panel to conduct an assessment of the administration of justice system, “including an analysis of whether the aims and objectives of the system ... are being achieved in an efficient and cost-effective manner”. The Interim Independent Assessment Panel issued its report in April 2016. The Panel considered that the system was an improvement over the previous system and, to a great extent, met the objectives of the General Assembly when it established the new system. While further improvements were possible, the Panel concluded that “no dramatic corrections” were necessary.<sup>37</sup>

40. Since 2019, the United Nations Dispute Tribunal has been composed of three full-time judges and six half-time judges, who are appointed for a period of seven years by the General Assembly. United Nations Dispute Tribunal judges are required to have “at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions”. The United Nations Appeals Tribunal is composed of seven judges, who are also appointed for seven years by the General Assembly. United Nations Appeals Tribunal judges are required to have 15 years of judicial experience in “administrative law, employment law or the equivalent within one or more national or international jurisdictions”, which may include five years of relevant academic experience. Both the United Nations Dispute Tribunal and the United Nations Appeals Tribunal require fluency in English or French. In the case of both tribunals, no two judges may have the same nationality, due regard is to be given to geographic distribution and gender balance, and judges must be impartial and of high moral character.<sup>38</sup>

41. The United Nations Dispute Tribunal operates full-time throughout the year, with locations in Geneva, Nairobi and New York. Cases are normally decided by a single judge but may be decided by a panel of three judges. The United Nations Appeals Tribunal generally holds three sessions a year, and it exercises its functions in New York as the Tribunal’s seat. The Appeals Tribunal may decide to hold sessions in Geneva or Nairobi, as required by its caseload. Cases are normally reviewed by a panel of three United Nations Appeals Tribunal judges and decided by a majority opinion, but they may be decided by the whole Tribunal where significant questions of law arise. In the light of the COVID-19 pandemic, the United Nations tribunals have also conducted their work virtually.<sup>39</sup>

42. Further details about the operations and resources of the United Nations tribunals may be found in the report of the Secretary-General on the administration of justice at the United Nations (A/75/162) and the proposed programme budget for 2021 (A/75/6 (Sect. 1)).

<sup>37</sup> Resolution 68/254; and A/71/62/Rev.1, summary.

<sup>38</sup> Statute of the United Nations Dispute Tribunal, art. 4; statute of the United Nations Appeals Tribunal, art. 3.

<sup>39</sup> Statute of the United Nations Dispute Tribunal, arts. 5 and 10; and Statute of the United Nations Appeals Tribunal, arts. 4 and 10.

## II. Past efforts to address challenges of having two Tribunal systems for the United Nations common system

43. The concerns expressed by the General Assembly in December 2019 regarding the “challenge of having two independent administrative tribunals with concurrent jurisdiction among the organizations of the common system” echo similar concerns that have been raised in previous decades. Indeed, concerns that divergence in the jurisprudence of the two tribunals on matters relating to the International Civil Service Commission could undermine the coherence of the United Nations common system began to emerge soon after the establishment of ICSC in 1975. Those concerns gave rise to extensive discussions, initiatives and proposals centring on three different objectives: first, assessing the feasibility of creating a single administrative tribunal as opposed to the harmonization of the statutes of the existing tribunals; second, ensuring an active role for the Commission in judicial proceedings that examine ICSC decisions and recommendations; and third, establishing a mechanism for resolving questions of law in respect of ICSC decisions and recommendations as a means of avoiding divergence in the jurisprudence of the two tribunals.

### A. Feasibility of a single administrative tribunal and harmonization of Tribunal statutes (1978–1989)

44. In October 1978, the International Civil Service Commission reported to the General Assembly that ILO had deferred action on the introduction of a new salary scale in Geneva pending receipt of an advisory opinion issued by three ILOAT judges in their individual capacity. The advisory opinion concluded that the introduction of a new salary scale required prior negotiation with the staff union. The Commission noted that acceptance of the principle that modifications of salary scales required prior negotiations with staff “would adversely affect the legal basis on which salaries are established throughout the United Nations system and the procedures followed for this purpose”. Expressing “deep concern [about the] discordant actions taken unilaterally by several” organizations, the General Assembly requested the “Secretary-General and his colleagues on the Administrative Committee on Coordination to study the feasibility of establishing a single administrative tribunal for the entire common system”.<sup>40</sup>

45. In response to the request of the General Assembly, an existing joint Working Group on Recourse Procedures, comprising the Consultative Committee on Administrative Questions and the Federation of International Civil Servants’ Associations (FICSA), appointed a consultant, who produced a paper entitled “Administrative tribunal procedures and unification”. The paper was considered at an ad hoc meeting of the legal advisers of the specialized agencies in September 1979, together with an International Labour Office paper entitled “Comparative analysis of the statutes of the Administrative Tribunals of the International Labour Organisation and of the United Nations” and a “Working paper on the possible amalgamation of the United Nations and ILO Administrative Tribunals” prepared by the Office of Legal Affairs of the United Nations.<sup>41</sup>

<sup>40</sup> See A/33/30, paras. 17–25; and General Assembly resolution 33/119. The Administrative Committee on Coordination was established pursuant to Economic and Social Council resolution 13 (III) to ensure the implementation of agreements between the United Nations and specialized agencies. In 2001, the Council renamed the Administrative Committee on Coordination as the United Nations System Chief Executives Board for Coordination.

<sup>41</sup> See CCAQ/PER/R.107, annex II; and CCAQ/PER/WCRP/R.2.

46. Bearing in mind the outcome of the ad hoc meeting of Legal Advisers, of September 1979, the Secretary-General advised the General Assembly, in a report issued in November 1979, that in “over the nearly 30 years that the two Tribunals have operated side by side, no real divergence in jurisprudence has arisen”. Furthermore, notwithstanding the advisory opinion issued by the ILOAT judges in their personal capacity, both the ILO Administrative Tribunal and the United Nations Administrative Tribunal had ultimately ruled in favour of the organizations in their review of the challenges to the Geneva salary scale that had prompted the General Assembly to request a study of the establishment of a single administrative tribunal. Accordingly, the Secretary-General stated in his report that “concerns that appear to have led the General Assembly to make its request are, in fact, not so compelling as to call for such a step at this time”.<sup>42</sup>

47. Moreover, in the same report, the Secretary-General noted that the establishment of a single administrative tribunal would not result in administrative efficiencies and the consequent increase in caseload would create difficulties for ILOAT judges and the members of the United Nations Administrative Tribunal, who only served on a part-time basis. Any changes to transform the Tribunals would require approval by both the General Assembly and the International Labour Conference, as well as consultation with and acceptance by the 22 organizations that recognized the jurisdiction of either of the two Tribunals. As the main differences in the operation of the two Tribunals stemmed from their respective statutes, rules and institutional practices, it seemed “advisable ... to pursue ... a progressive alignment ... of the statutes, rules and practices of the two Tribunals ... which would also pave the way for further measures of unification”. In view of the desirability of “ensuring coherence to jurisprudence”, consideration could be given to the creation of a joint mechanism “to which, ... either Tribunal, on its own initiative or at the request of either party to a case before it, could resort for the resolution of points of law relevant to the common system”.<sup>43</sup>

48. In response to the report of the Secretary-General, the General Assembly in December 1979 requested that the Secretary-General and the Administrative Committee on Coordination “pursue a progressive harmonization and further development of the statutes, rules and practices of the Administrative Tribunal of the International Labour Organisation and of the United Nations Administrative Tribunal, with a view to strengthening the common system and with the aim of establishing a single tribunal”. Following that request of the General Assembly, numerous studies and proposals were prepared.<sup>44</sup>

49. In September 1984, following inter-agency and staff consultations, the Secretary-General submitted a report containing detailed proposals. The report set out 27 proposals relating to eight areas: (a) composition of the United Nations Administrative Tribunal; (b) extension of jurisdiction; (c) formal prerequisites for proceedings; (d) procedures; (e) remedies; (f) post-judgment proceedings; (g) review of Tribunal judgments; and (h) cooperation between Tribunals. Most of the proposals were aimed at the general reform of the United Nations Administrative Tribunal. Two proposals, however, were directly relevant to addressing divergence in jurisprudence:

(a) In the report, it was proposed that a joint United Nations Administrative Tribunal/ILO Administrative Tribunal panel be created, which would issue advisory

<sup>42</sup> See [A/C.5/34/31](#), paras. 6 and 13. See also [ACC/1979/70](#).

<sup>43</sup> See [A/C.5/34/31](#), paras. 10–12.

<sup>44</sup> See General Assembly decision 34/438 (in A/34/46); International Labour Office, documents GB.213/PFA/9/14, GB.215/PFA/15/17 and GB.225/PFA/11/13. See also [A/C.5/36/23](#), [A/C.5/37/23](#) and [A/C.5/38/26](#).

opinions on “any general legal question of interest to organizations applying the United Nations common system of staff administration”;<sup>45</sup>

(b) In the report, it was also envisaged that an assessor would be appointed to assist the judges to undertake “studies that the members of the tribunals can make during the limited time they have during their relatively brief sessions, and in particular would enable these members to keep in touch informally with the other tribunal so as to further the harmonization of their jurisprudence.”<sup>46</sup>

50. Similarly, in October 1984, the International Labour Office presented a report to the Governing Body of the International Labour Office, which proposed amendments to the ILOAT statute to extend jurisdiction to other contractual disputes; to codify the criteria for the selection of judges; to clarify procedures for dismissing judges; to affirm the independence of the Registrar; to extend time limits for heirs or trustees; to allow parties to be heard before ordering specific performance; to include procedures on remand, award of costs and revision, correction or interpretation of judgments; and to revise the process for requesting advisory opinions from the International Court of Justice.<sup>47</sup> ILO did not consider it necessary to establish a panel in the ILO Administrative Tribunal to provide advisory opinions and considered that ILOAT participation in the panel created under the statute of the United Nations Administrative Tribunal was sufficient to ensure that the ILO Administrative Tribunal jurisprudence would be taken into account. ILO also supported the proposal for the appointment of an assessor.<sup>48</sup> The Governing Body did not take any decision on these proposals and postponed further discussion to subsequent sessions.

51. The proposals of the Secretary-General were reissued in subsequent reports, but the General Assembly deferred its consideration of the reports from 1984 to 1986.<sup>49</sup> Then, in 1987, the General Assembly requested the Secretary-General to consult with Member States on the proposals, with the participation of the Director General of ILO.

52. From March to July 1988, the United Nations Legal Counsel chaired 14 consultative meetings. In addition to Member States, the Legal Counsel invited the Director General of ILO, the Executive Secretary of the United Nations Administrative Tribunal, the Registrar of the International Labour Organization Administrative Tribunal and the Secretary of the Committee on Applications for Review of Administrative Tribunal Judgements. The report of the Secretary-General on this matter issued in 1988 was, for the first time, entitled “Harmonization of the statutes, rules and practices of the administrative tribunals of the International Labour Organisation and of the United Nations”. Previous reports and notes of the Secretary-General had been entitled “Feasibility of establishing a single administrative tribunal”. The revised text of the United Nations Administrative Tribunal statute in the report published in 1988, resulting from the informal consultations, did not include the proposed amendments relating to a joint ILO Administrative Tribunal/United Nations Administrative Tribunal panel to issue advisory opinions or to the appointment of assessors. Member States were requested to provide written

<sup>45</sup> See [A/C.5/39/7](#), paras. 25–28, and annex I, art. 2 *tres*.

<sup>46</sup> See [A/C.5/39/7](#), paras. 93 and 94.

<sup>47</sup> International Labour Office, document GB.228/PFA/11/11.

<sup>48</sup> International Labour Office, note on the harmonization and further development of the statutes, rules and practices of the International Labour Organization Administrative Tribunal and the United Nations Administrative Tribunal.

<sup>49</sup> See [A/40/471](#); [A/C.5/41/8](#); [A/42/328](#); General Assembly decisions 39/450 (in [A/39/51](#)); 40/465 (in [A/40/53](#)); and 41/447 (in [A/41/53](#)). See also resolution [42/217](#).

comments on the proposals and those comments were reported to the General Assembly.<sup>50</sup>

53. In 1989, the Fifth Committee discussed the proposals of the Secretary-General. Delegations noted that the two tribunals remained separate “for historical reasons. ... Efforts to establish a single tribunal or to harmonize the statutes, rules and practices of the two tribunals, which had begun in 1978, had been of no avail, and Member States had unanimously agreed to close discussion of the matter for the time being”.<sup>51</sup> In November 1989, the General Assembly adopted decision 44/413, deciding to “retain, pending further consideration, the existing statute of the Administrative Tribunal of the United Nations” and “[r]equested the Secretary-General to revert to this matter, when appropriate, taking into account these comments of Member States”.<sup>52</sup>

54. Meanwhile, in ILO, a tripartite working party was established in 1985 to examine the proposed amendments to the ILOAT statute.<sup>53</sup> The working party largely endorsed the proposed amendments, while developing further revisions to some amendments.<sup>54</sup> Even after the General Assembly decided to leave the United Nations Administrative Tribunal statute unchanged, the working party considered that it should continue, albeit reconstituted as the “Working Party to review the Statute of the ILO Administrative Tribunal”. This proposal was approved by the Governing Body of the International Labour Office in 1990.<sup>55</sup> As discussed in section I, some of the amendments to the ILOAT statute proposed by the International Labour Office and endorsed by the Working Party, relating to the applications for interpretation and review of judgments, were approved in 2016.<sup>56</sup>

55. In the following decades, initiatives to reform the internal justice system continued to refer to the objective of harmonizing the statutes of the ILO Administrative Tribunal and the United Nations Administrative Tribunal. However, these initiatives were aimed at the general reform of the Tribunals. They no longer addressed the original issue that had prompted the General Assembly’s request in 1978 for a study of the feasibility of a single administrative tribunal, that is, the risk for potential divergence between the two Tribunals in addressing issues that have an impact on the United Nations common system. Indeed, the reports of the Joint Inspection Unit in 2000, 2002 and 2004, as well as the subsequent reports of the Redesign Panel, in 2006, and the Interim Independent Assessment Panel, in 2016, made no direct reference or recommendations regarding the adjudication of disputes pertaining to matters relating to the International Civil Service Commission.

56. Another recurring issue in the discussions on establishing a single administrative tribunal and harmonizing the statutes of the ILO Administrative Tribunal and the United Nations Administrative Tribunal was the establishment of an appellate review for Tribunal judgments. The study published in 1979, entitled “Administrative tribunal procedures and unification”, prepared by the consultant for the joint Working Group on Recourse Procedures, examined the question of a right of appeal and the establishment of a two-tiered system. The reports of the Secretary-General in the 1980s, beginning in 1984, also addressed the issue of review of Tribunal judgments. The proposals of the Secretary-General acknowledged that under the circumstances at the time, the review of judgments was undertaken by the

<sup>50</sup> See [A/43/704](#), annex I, arts. 2 quater, 5 bis, 6(2)(a\*), 6(2)(i), and 11 bis; [A/C.5/44/1](#); and [A/C.5/44/1/Add.1](#).

<sup>51</sup> See [A/C.5/44/SR.43](#), para. 15. See also [A/C.5/44/SR.15](#).

<sup>52</sup> General Assembly decision 44/413 (in [A/44/49](#)).

<sup>53</sup> International Labour Office, document GB.231/11/27, para. 53.

<sup>54</sup> International Labour Office, document GB.234/PFA/11/17.

<sup>55</sup> International Labour Office, document GB.246/8/22, para. 33.

<sup>56</sup> International Labour Office, documents GB.228/PFA/11/11, GB.234/PFA/11/17, GB.246.PFA/12/15 and GB.246/8/22.

International Court of Justice but other options for appellate review could be considered.<sup>57</sup>

57. In 1999, the Legal Advisers of the United Nations system prepared a note on the “Advisability of introducing a second-tier appellate mechanism to enhance the administration of justice in the United Nations system”. In the note, three options were considered: (a) establishing a separate appellate mechanism for each agency or organization; (b) establishing a common second-tier for the United Nations system and (c) establishing a second-tier for each administrative tribunal. As a fourth option, the Legal Advisers proposed that each Tribunal could review its own judgments by sitting in a plenary session to review an extraordinary appeal of a decision by one of its chambers. The Administrative Committee on Coordination noted the recommendation of the Legal Advisers to not further pursue the establishment of a second-tier appellate mechanism, but the Committee also expressed interest in the idea of creating a procedure for the Tribunal to review its own judgments.<sup>58</sup>

58. In its 2002 report, the Joint Inspection Unit recommended a study of the establishment of an appellate mechanism to review judgments of the ILO Administrative Tribunal and the United Nations Administrative Tribunal, or of a single tribunal. The United Nations Administrative Tribunal expressed its concerns about the establishment of an appellate mechanism. In response to that report, the International Labour Office observed that the “ILOAT serves many organizations that do not belong to the UN system. The JIU inspectors did not appear to have considered this when formulating their recommendations”.<sup>59</sup>

59. Ultimately, as discussed in section II, a two-tiered system of justice was adopted in the United Nations tribunal system.

## **B. Providing notice and opportunity for the International Civil Service Commission to present its views to the Tribunals (1993–1994)**

60. In 1993, the ILO Administrative Tribunal issued two judgments (judgments Nos. 1265 and 1266) in which staff members successfully challenged the adoption of a new salary scale by the International Civil Service Commission. The ILO Administrative Tribunal considered that when comparing the pay of General Service staff, ICSC should have adhered to a scale with 11 or 12 steps of the common system, and should not have counted the additional within-grade steps at the 13th or 14th levels used by some organizations. The Commission reported on these judgments in its annual report to the General Assembly.

61. In December 1993, the General Assembly expressed regret that the Commission had not been given an opportunity to present its views to the ILO Administrative Tribunal and requested the Secretary-General and the executive heads of other organizations of the common system to consult with ICSC and to reflect the views of the Commission in submissions filed with the United Nations Administrative Tribunal and ILOAT. The Secretary-General was also requested to consult with the executive heads and examine the feasibility of amending the statute of the Commission and/or the “relationship agreements between the United Nations and the other organizations of the common system with a view to ensuring a coordinated response in all appeals”,

<sup>57</sup> See CCAQ/PER/R.107, annex II, paras. 87–91; and [A/C.5/39/7](#), para. 68.

<sup>58</sup> Note on the “Advisability of introducing a second-tier appellate mechanism to enhance the administration of justice in the United Nations system”, March 1999; and [ACC/1999/20](#), paras. 61–67.

<sup>59</sup> See [A/57/441](#), recommendation 5; [A/C.5/57/25](#); and International Labour Office, document GB.288/PFA/13/3, para. 53.

as well as amending the rules of procedure of the Tribunals to provide timely notice of cases to ICSC so as to enable the Commission to present its views.<sup>60</sup>

62. In October 1994, the Secretary-General reported on the outcome of the requested consultations. As the agreements between the United Nations and the specialized agencies governed their bilateral relationships, such agreements were not an appropriate framework within which to address submissions to the Tribunals. In addition, the Secretary-General cautioned against reopening the statute of the Commission for that purpose. Rather, the Secretary-General suggested that the rules of procedure of the Tribunals could be amended to allow the Chairman of the Commission to participate in proceedings before the Tribunals. The Secretary-General proposed text for such an amendment and suggested that the General Assembly request him to write to the President of the United Nations Administrative Tribunal.<sup>61</sup>

63. In December 1994, the General Assembly adopted resolution [49/223](#), requesting that the Secretary-General and the ILO Director General consult the Tribunals of the United Nations and ILO, respectively, with a view towards amending their rules to read as follows:

If, in any proceeding, it appears that the judgement of the Tribunal may affect a rule, decision or scale of emoluments or contributions of the common system of staff administration, the [Executive Secretary/Registrar] of the Tribunal shall promptly inform the Executive Secretary of the International Civil Service Commission and enquire whether the Commission wishes to participate in the proceeding. If the Commission indicates its wish to do so, it shall be provided with copies of all the pleadings and shall be permitted to comment thereon, and also to participate in any oral proceedings.

64. The text was included verbatim as article 20 (2) of the rules of procedure of the United Nations Administrative Tribunal. For its part, in November 1993, the ILO Administrative Tribunal had already amended article 13.3 of its Rules, allowing the Tribunal to give notice of a complaint to any third party that wished to make submissions, and article 11.1, allowing the Tribunal, on its own motion, to consult a “competent international authority”. Both of those provisions provided a sufficient basis to invite submissions from the Commission and indeed, since 1995, the ILO Administrative Tribunal has regularly invited and considered submissions of ICSC.

### **C. Joint panel for advisory opinions on matters relating to the International Civil Service Commission (1995–1999)**

65. The issue of establishing a forum to resolve questions about the legality of decisions and recommendations of the International Civil Service Commission was discussed at successive meetings of the Legal Advisers of the United Nations system from 1995 to 1998. In these discussions, the Legal Advisers observed that an executive head is placed in a

somewhat invidious situation in cases where he believes the decision to be legally flawed. If he applies the decision in order to allow his staff to bring it to a judicial forum, he is acting in breach of his legal responsibilities as defined by that same forum, by whose decisions he is legally bound. In such cases, he would be rightfully subject to criticism both from the Administrative Tribunal concerned and from his own staff. If, on the other hand he declines to implement the decision, he may find himself subject to political criticism without being

<sup>60</sup> See A/48/30; and resolution [48/224](#). The General Assembly expressed similar concerns about prior consultation with the United Nations Joint Staff Pension Board.

<sup>61</sup> See [A/49/480](#).

able to demonstrate, through the opinion of a competent judicial authority, the soundness of his grounds for taking such action.<sup>62</sup>

66. In 1998, the ILO Administrative Tribunal issued three judgments setting aside payments made according to a Rome salary scale adopted by ICSC and post adjustment payments based on calculations by ICSC. In its annual report for 1998, the Commission raised the question of whether it “would be possible to secure a judicial advisory opinion before a decision was taken or implemented”.<sup>63</sup>

67. In October 1998, the Administrative Committee on Coordination considered a proposal by the Legal Advisers of the United Nations system to amend the statute of the Commission in order to establish an ad hoc advisory panel comprising the Presidents of the United Nations Administrative Tribunal and the ILO Administrative Tribunal, as well as a third person chosen by them. The ad hoc advisory panel would be authorized to provide advisory opinions on the legality of ICSC decisions and recommendations, upon the request of the Chair of ICSC or an executive head of an organization of the common system. The Committee noted that the proposal had the consensus of the Legal Advisers of the United Nations system and requested that the views of the Presidents of both tribunals be sought.<sup>64</sup>

68. In his comments, the President of the ILO Administrative Tribunal stressed that advisory opinions issued by the proposed panels would not bind the tribunals in their consideration of contentious cases. He considered that consultation with the legal advisers on the legality of ICSC decisions and recommendations would be more in conformity with established institutional roles. He also expressed concerns about involving the President of either Tribunal and suggested that the panel should be composed of a judge from ILOAT and one from the United Nations Administrative Tribunal, designated by the Presidents of the respective tribunals. These views were shared by the President of the United Nations Administrative Tribunal. On the basis of those comments, the composition of the ad hoc advisory panel was revised to include judges of the ILO Administrative Tribunal and the United Nations Administrative Tribunal, rather than the Presidents of those tribunals.<sup>65</sup>

69. In April 1999, the Administrative Committee on Coordination endorsed the amended proposal with the revised composition of the ad hoc advisory panel. The Committee requested ICSC to submit the proposed amendment of the statute of the Commission to the General Assembly for its consideration. However, in its annual report for 1999, ICSC expressed reservations about the proposal, noting that there was no need for such a panel, since so few decisions and recommendations had been successfully challenged. It questioned whether the proposed mechanism for advisory opinions would deter further litigation, as such opinions would not be binding. Moreover, the Commission expressed concerns about the delays in the implementation of ICSC decisions and recommendations that would result from adding a process for seeking advisory opinions. The Commission requested that its comments be submitted to the General Assembly, should the Administrative Committee on Coordination submit the proposal to the Assembly.<sup>66</sup>

70. Ultimately, the Secretary-General, on behalf of the Administrative Committee on Coordination, submitted the proposal to amend the statute of ICSC to the General

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<sup>62</sup> “Judicial review of decisions taken by the ICSC”, note prepared by the Legal Advisers of the United Nations system, September 1998.

<sup>63</sup> *Ibid.*; International Labour Organization Administrative Tribunal, judgment Nos. 1713, 1765 and 1766; and [A/53/30](#), para. 174.

<sup>64</sup> See [ACC/1998/20](#), paras. 55 and 56.

<sup>65</sup> “Judicial review of decisions taken by the ICSC”, note prepared by the Legal Advisers of the United Nations system, March 1999.

<sup>66</sup> See [ACC/1999/4](#), paras. 44–46; and [A/54/30](#), paras. 202–215.

Assembly. In December 1999, the Assembly adopted resolution [54/238](#), whereby it considered the proposal of the Secretary-General to amend the statute of ICSC, took note of the comments of ICSC and reaffirmed the statute of the Commission.<sup>67</sup>

### **III. Jurisprudence of the International Labour Organization Administrative Tribunal and the United Nations Tribunals on decisions and recommendations of the International Civil Service Commission**

71. In its resolution [74/255](#) B, the General Assembly expressed concern about the challenges of “having two independent administrative tribunals with concurrent jurisdiction among the organizations of the common system”, suggesting concern about the risk of divergent jurisprudence. This section examines the extent to which the ILO Administrative Tribunal and the United Nations Tribunals have diverged in their review of ICSC decisions and recommendations.

72. The survey of jurisprudence covers the period from 1975, when the Commission was established, through 2016. The survey ends in December 2016, bearing in mind that judgments issued after 2016 involve matters that may still be under litigation in another tribunal. Recent challenges to the unified salary scale and the Geneva post adjustment for which decisions were issued, respectively, by the United Nations Appeals Tribunal and the ILO Administrative Tribunal in 2018 and 2019, are therefore not discussed, nor are issues that may arise during the course of the ongoing litigation of these cases.

73. This section considers the possibility of divergence in the jurisprudence only in relation to ICSC decisions and recommendations, as this had formed the basis for the concerns of the General Assembly in December 2019. Accordingly, areas unrelated to ICSC matters in which there is divergence in jurisprudence are not discussed. While reference is made throughout the section to a review by the tribunals of ICSC decisions and recommendations, strictly speaking, the tribunals have reviewed the implementation of the challenged ICSC decisions or recommendation by the executive head of the respective organization.

#### **A. Scope of judicial review**

74. The jurisdiction of the ILO Administrative Tribunal and the United Nations Tribunals to review ICSC decisions and recommendations is subject to the scope of their competence as set out in their respective statutes. The ILO Administrative Tribunal is competent to hear “complaints alleging non-observance, in substance or in form, of the terms of appointment”. The United Nations Dispute Tribunal is competent to review an application to “appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”. An appellate review by the United Nations Appeals Tribunal of a United Nations Dispute Tribunal judgment would take into account the scope of the United Nations Dispute Tribunal’s competence. The reference to an “administrative decision” in the statute of the United Nations Dispute Tribunal is not found in the ILOAT statute.

75. The ILO Administrative Tribunal has held that by incorporating the standards of the common system in the rules of its own organization, an executive head is

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<sup>67</sup> See [A/C.5/54/24](#); and resolution [54/238](#), sect. IV.

responsible for ensuring that such standards do not contain or entail any unlawful elements.<sup>68</sup> In judgment No. 1265, the ILO Administrative Tribunal held that:

... by incorporating the standards of the common system in its own rules the Organization has assumed responsibility towards its staff for any unlawful elements that those standards may contain or entail. Insofar as such standards are found to be flawed they may not be imposed on the staff and WIPO must if need be replace them with provisions that comply with the law of the international civil service. That is an essential feature of the principles governing the international legal system the Tribunal is called upon to safeguard.<sup>69</sup>

76. This responsibility was reiterated in a number of judgments, as indicated in the following:

... The fact that an international organisation belongs to the common system does not enable it to decline or limit its own responsibility towards the members of its staff or lessen the degree of judicial protection it owes them. Any organisation that introduces elements of the common system into its own rules has a duty to ensure that the texts it thereby imports are lawful ... Whilst the Tribunal fully appreciates the difficulties ... that international organisations are liable to face in departing from the salary scales adopted on the basis of ICSC recommendations, it is nevertheless bound to ensure that international law is observed in the relations between the said organisations and their staff, regardless of the external authority from which the decisions taken emanate.<sup>70</sup>

77. The ILO Administrative Tribunal has also held that the scope of its review in those cases is limited to examining whether there was “no authority to take [the decision], or if there was a breach of form or of procedure or some obvious mistake of fact or of law, or if the decision was arbitrary, or if there was abuse or misuse of authority”.<sup>71</sup> When ILOAT examines whether ICSC has abused its authority, it will look at whether the methodology “used contrives artificially to reduce the levels of the salaries compared, or if corners are cut for the sake of saving time to the detriment of the staff concerned, or if some particular factor is overlooked or misconstrued”.<sup>72</sup> The ILO Administrative Tribunal has stressed that the “methodology is an important factor in ensuring that the results are stable, foreseeable and clearly understood”.<sup>73</sup>

78. As for the United Nations Tribunals, the parameters of judicial review and their applicability to decisions and recommendations of ICSC are the subject of ongoing litigation before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.

<sup>68</sup> International Labour Organization Administrative Tribunal, judgment No. 1265, consideration 24.

<sup>69</sup> Ibid. The principle was spelled out in International Labour Organization Administrative Tribunal, judgment No. 825, consideration 18, as follows: “The rule is that an Administration is bound to comply with the law. If its own decision is based on one taken by someone else it is bound to check that the other one is lawful”.

<sup>70</sup> International Labour Organization Administrative Tribunal, judgment No. 2420, consideration 11.

<sup>71</sup> International Labour Organization Administrative Tribunal, judgment No. 1000, consideration 12; and judgment No. 1776, consideration 3.

<sup>72</sup> International Labour Organization Administrative Tribunal, judgment No. 2571, consideration 3.

<sup>73</sup> International Labour Organization Administrative Tribunal, judgment No. 1265, consideration 27.

## **B. Jurisprudence of the International Labour Organization Administrative Tribunal on decisions and recommendations of the International Civil Service Commission**

79. From 1975 to 2016, the ILO Administrative Tribunal reviewed decisions and recommendations of the Commission in 51 judgments, dismissing the applications in 40 judgments and allowing the applications in 11 judgments. ILOAT concluded that the applications were meritorious in 11 judgments, which involved challenges to six ICSC decisions and recommendations, as summarized below:

**(a) Suspended increase of New York post adjustment classification (1984).**

In November 1984, the General Assembly requested ICSC to suspend an increase in the post adjustment classification of New York, which affected other duty stations, including Baghdad. In December 1984, ICSC decided to suspend the increase in the post adjustment classification of New York. The Commission subsequently confirmed the decision in March 1985. The ILO Administrative Tribunal, endorsing the reasoning of United Nations Administrative Tribunal judgment No. 370, concluded that the decision-making process followed by ICSC in December 1984 was procedurally flawed and thus the decision was not valid until it was confirmed in March 1985. In one instance in which the Food and Agriculture Organization of the United Nations (FAO) implemented a new post adjustment classification in Baghdad in February 1985, the ILO Administrative Tribunal ordered FAO to pay the post adjustment with the prior post adjustment multiplier for February and March 1985 (ILOAT judgment No. 831).

**(b) Vienna salary scale (1987).** In 1987, ICSC adopted a new salary scale for General Service staff in Vienna. Noting that staff of the International Atomic Energy Agency (IAEA) had access to Commissary privileges not available to staff of local employers, ICSC reduced the salary of General Service staff by 2.4 per cent to offset the “Commissary benefit”. The ILO Administrative Tribunal held that ICSC erred in treating access to the Vienna Commissary as a benefit part of the remuneration package that needed to be offset when calculating the salary scales. ILOAT ordered IAEA and the United Nations Industrial Development Organization (UNIDO) to recalculate salaries by discounting the Commissary benefit (ILOAT judgments Nos. 1000 and 1001).

**(c) Geneva salary scale (1991).** In 1991, ICSC adopted a new salary scale for General Service staff in Geneva. In conducting a comparison of local conditions with the pay of General Service staff, ICSC considered the extra within-grade steps at the 13th or 14th levels offered by some organizations, when the common system required no more than 11 or 12 levels. The ILO Administrative Tribunal held that it was unfair to use a criterion that did not apply to all the organizations alike. ILOAT ordered the World Intellectual Property Organization (WIPO) and the International Union for the Protection of New Varieties of Plants to revise the scale in a manner that discounted the additional steps (ILOAT judgments Nos. 1265 and 1266).

**(d) Rome salary scale (1994).** The Commission adopted a new salary scale for General Service staff in Rome effective as of 1994, discontinuing a previous practice of fixing salary scales slightly above prevailing local rates because FAO required staff to work in a language other than Italian. The ILO Administrative Tribunal noted that ICSC had not considered whether local employers provided additional compensation for proficiency in a language other than Italian before discontinuing the language factor. ILOAT concluded that by discontinuing the language factor under these circumstances, ICSC ignored the peculiarities of the employment market in Rome. ILOAT ordered FAO to consider the language factor when calculating salaries (ILOAT judgment No. 1713).

(e) **Correction of Geneva post adjustment multiplier (1995).** In May 1993, the statistics office in the canton of Geneva created a new head of expenditure in its consumer price index, which ICSC did not consider when it calculated the post adjustment multiplier for July 1994. Upon discovery of this error, ICSC corrected the post adjustment prospectively from July 1995 onwards. The ILO Administrative Tribunal concluded that the correction should not apply prospectively but from when the mistake was made. ILOAT ordered WIPO and the International Union for the Protection of New Varieties of Plants to revise the post adjustment calculations from July 1994 (ILOAT judgments Nos. 1765 and 1766).

(f) **Geneva salary scale (1995).** In 1995, ICSC adopted a new salary scale for General Service staff in Geneva. In considering allowable tax deductions for professional expenses, ICSC recognized having incorrectly used the figure of 700 Swiss francs, instead of 1,700 Swiss francs. The ILO Administrative Tribunal ordered the International Telecommunication Union, WIPO and the International Union for the Protection of New Varieties of Plants to apply a new scale correcting this error (ILOAT judgments Nos. 1840, 1841 and 1842).

### C. Jurisprudence of United Nations Tribunals on decisions and recommendations of the International Civil Service Commission

80. From 1975 until its abolition in 2009, the United Nations Administrative Tribunal examined the decisions and recommendations of ICSC in six judgments, dismissing the applications in four judgments and allowing the applications in two judgments. The United Nations Administrative Tribunal concluded that the applications were meritorious in two judgments, which are summarized below:

(a) **Revised conditions for the payment of repatriation grant.** In 1979, ICSC recommended to the General Assembly that a staff member must provide documentary evidence of relocation as a condition for the payment of repatriation grant. The Commission also recommended that as a transitional measure, the new condition would not apply to staff members already entitled to a repatriation grant. In December 1979, the Assembly adopted the new condition for the payment of repatriation grants, without any transitional measures. A staff member argued that he had an acquired right to a repatriation grant without the need to provide evidence. The United Nations Administrative Tribunal considered that the imposition of the new condition breached the acquired rights of staff members. In that case, the United Nations Administrative Tribunal ordered the payment of the repatriation grant without requiring evidence of relocation (United Nations Administrative Tribunal judgment No. 273).

(b) **Suspended increase of New York post adjustment classification (1984).** In November 1984, the General Assembly requested ICSC to suspend an increase in the post adjustment classification of New York. In December 1984, ICSC decided to suspend the increase in the post adjustment classification of New York. The Commission subsequently confirmed the decision in March 1985. The United Nations Administrative Tribunal considered that ICSC did not comply with its rules of procedure in making the December 1984 decision. The United Nations Administrative Tribunal allowed the application and ordered the payment of post adjustment based on the higher classification from 1 December 1984 to March 1985 (United Nations Administrative Tribunal judgment No. 370).

81. From 2009 to 2016, the United Nations Dispute Tribunal examined the decisions and recommendations of ICSC in 10 judgments, which were further considered by the United Nations Appeals Tribunal in four judgments. The applications were dismissed in all of those cases.

## D. Overview of adjudication of decisions and recommendations of the International Civil Service Commission

82. From 1975 to 2016, there were 33 decisions or recommendations of ICSC challenged before either the ILO Administrative Tribunal, the United Nations Tribunals, or both. The table below contains a list of the decisions and recommendations challenged from 1975 to 2016, by the year of the decisions and recommendations of the Commission, and the corresponding judgments in the ILO Administrative Tribunal and the United Nations Tribunals. Where a Tribunal concluded that the applications were meritorious, the judgments appear in bold.

### Jurisprudence of the International Labour Organization Administrative Tribunal and United Nations Tribunals on decisions and recommendations of the Commission (1975–2016)

<i>Year</i>	<i>Decision/recommendation of the Commission</i>	<i>International Labour Organization Administrative Tribunal, judgment Nos.</i>	<i>United Nations tribunal, judgment Nos. (United Nations Administrative Tribunal, United Nations Dispute Tribunal or United Nations Appeals Tribunal)</i>
1. 1978	Geneva salary scale	380, 381, 382	United Nations Administrative Tribunal, 236
2. 1979	New condition for repatriation grant	–	<b>United Nations Administrative Tribunal, 273</b>
3. 1984	Suspended increase of New York post adjustment classification, affecting other duty stations	825, 826, 827, 828, 829, 830, <b>831</b>	<b>United Nations Administrative Tribunal, 370</b>
4. 1987	Vienna salary scale	<b>1000, 1001</b>	–
5. 1987	Introduction of end-of-service allowance	1086, 2123, 2467	–
6. 1990	Replacement of take-home pay differential with post adjustment	1239, 1240	–
7. 1990	Recommendation against long-service within-grade steps	1446	–
8. 1990	Geneva post adjustment multiplier	1457	–
9. 1991	Geneva salary scale	<b>1265, 1266</b>	–
10. 1992	Geneva post adjustment	1356	–
11. 1991	Geneva post adjustment multiplier	1458	–
12. 1992	Geneva post adjustment multiplier	1459, 1460	–
13. 1992	Delayed interim adjustments	1641, 1642	–
14. 1993	Paris salary scale	1519	–
15. 1993	Montreal salary scale	–	United Nations Administrative Tribunal, 859
16. 1994	Denial of education grant	–	United Nations Administrative Tribunal, 781
17. 1994	Rome salary scale	<b>1713</b>	

<i>Year</i>	<i>Decision/recommendation of the Commission</i>	<i>International Labour Organization Administrative Tribunal, judgment Nos.</i>	<i>United Nations tribunal, judgment Nos. (United Nations Administrative Tribunal, United Nations Dispute Tribunal or United Nations Appeals Tribunal)</i>	
18.	1995	Correction of post adjustment calculations	1603, 1604, 1605	–
19.	1995	Correction of Geneva post adjustment multiplier	<b>1765, 1766</b>	–
20.	1995	Geneva post adjustment multiplier	1776, 1777	–
21.	1995	Geneva salary scale	<b>1840, 1841, 1842</b>	–
22.	1996	Geneva post adjustment index	1800, 1801	–
23.	1996	Vienna salary scale (language factor)	1915, 2059	United Nations Administrative Tribunal, 1100
24.	2000	Rome salary scale	2303	–
25.	2002	Professional salary scale	2420, 2421, 2422, 2423	–
26.	2002	Vienna salary scale	2610	–
27.	2004	Paris salary scale	2571	–
28.	2009	Hardship classification of Addis Ababa	–	UNDT/2013/008; 2014-UNAT-405
29.	2009	Contractual reform and phasing out of personal transitional allowance	–	UNDT/2013/121; 2014-UNAT-463
30.	2010	Seven-level General Service classification in Montreal	–	UNDT/2014/086, UNDT/2014/087, UNDT/2014/088, UNDT/2016/188; 2015-UNAT-555
31.	2010	Contractual reform and discontinuation of mission subsistence allowance	–	UNDT/2014/099, UNDT/2014/100, UNDT/2014/101
32.	2011	Vienna post adjustment	3360	–
33.	2012	Deferred New York post adjustment multiplier	–	UNDT/2014/035; 2015-UNAT-530

Abbreviations: UNAT, United Nations Appeal Tribunal; UNDT, United Nations Dispute Tribunal.

83. The table above illustrates that during the period under review, the same decision or recommendation of ICSC was challenged in both the ILO Administrative Tribunal and a United Nations Tribunal (the United Nations Administrative Tribunal) in only three instances. In each of those instances, the Tribunals reached the same conclusion regarding the decision or recommendation of the Commission, as set out below:

- (a) Payments according to the 1978 Geneva salary scale were upheld;

(b) The suspension by ICSC of the increase in the post adjustment classification in New York and other duty stations was deemed effective from April 1985, and not before;

(c) Payments according to the 1996 Vienna salary scale, which discontinued the language factor, were upheld.

84. During the period under review, from 1975 to 2016, there were no instances of divergence when the ILO Administrative Tribunal and the United Nations Tribunals considered the same ICSC decision or recommendation. The table above also reveals another issue. In five instances, one Tribunal concluded that the application was meritorious and there was no judgment from the other Tribunal. Those instances involved the ILOAT judgments summarized in paragraph 79 above and related to challenges to: (a) the Vienna salary scale in 1987; (b) the Geneva salary scale in 1991; (c) the Rome salary scale in 1994; (d) the correction of the Geneva post adjustment multiplier in 1995; and (e) the Geneva salary scale in 1995.

85. Following the issuance of those ILOAT judgments, ICSC took further action in two instances, as outlined below:

(a) After the ILO Administrative Tribunal concluded that in 1987, the Vienna salary scale erred in taking into account the Commissary benefits and ordered the payment of salaries according to a rate which discounted the Commissary benefit, ICSC recommended a new salary scale in accordance with the ILOAT judgments to the Vienna-based organizations, which was annexed to its annual report for 1990. The United Nations representative informed ICSC that the “Secretary-General would uphold the commonality of the system and therefore would not contest the parallel case before the United Nations Tribunal”;<sup>74</sup>

(b) After the ILO Administrative Tribunal concluded that ICSC improperly phased out the language factor without revising its methodology to determine whether local employers paid bonuses to employees with non-Italian language skills, ICSC revised the Rome salary scale to retain the language factor “in order to assist the Rome-based organizations in complying with the Tribunal’s mandate”. The United Nations representative noted that “the jurisdiction of the ILO Administrative Tribunal did not extend to his organization. However, in the case of Rome, where there were only a few United Nations staff members, the Organization would probably follow the lead agency (FAO) on this matter and adhere to the judgement”. This case also prompted ICSC to raise “the question of whether in future it would be possible to secure a judicial advisory opinion before a decision was taken or implemented...[and] noted with satisfaction that the legal counsels of the organizations were seized of the matter, and that several proposals had been circulated”.<sup>75</sup>

86. With respect to the remaining three instances, the ILOAT judgments required a recalculation of the 1991 Geneva salary scale without consideration of extra within-grade steps at the 13th or 14th levels as offered by some organizations; a retroactive correction of an error in the calculation of the 1994 Geneva post adjustment multiplier; and a recalculation of the 1995 Geneva salary scale using the correct figure for tax deductions. There is no record in ICSC reports for the years in which the ILOAT judgments were delivered indicating that ICSC or the United Nations Secretariat had taken action to consider whether the broader application of the ILOAT judgments to organizations not party to the specific cases was warranted. Consequently, in these three instances there would have been an inconsistency in the

<sup>74</sup> See A/45/30, para. 239.

<sup>75</sup> See A/53/30, paras. 169–175.

payment of salaries to General Service staff members in Geneva, depending on whether they had been subject to the relevant ILOAT judgments or not.

#### **IV. Options for promoting consistency in the implementation of International Civil Service Commission decisions and recommendations in the context of two independent tribunal systems**

87. As discussed in section III, the coexistence of two independent tribunal systems with concurrent jurisdiction over the United Nations common system has not given rise, to date, to divergent jurisprudence relating to decisions and recommendations. Nevertheless, even without divergent jurisprudence on the same ICSC matter, having two tribunal systems can result in inconsistent implementation of ICSC decisions or recommendations across the United Nations common system when one tribunal issues a judgment that does not bind all the organizations of the common system. As litigation is ongoing regarding the 2017 Geneva post adjustment multiplier, that specific matter is not discussed in the present report; however, the purpose of the present section is to identify options that can be further developed to prevent similar situations in the future.

88. Understanding the problem as one of inconsistent implementation of ICSC decisions and recommendations across the United Nations common system, rather than one of divergence in the jurisprudence, is only part of the analysis. It is also relevant to assess the gravity of the problem. One view can be that, if the problem of inconsistent implementation has occurred only a handful of times in the past and is unlikely to arise with any degree of frequency in the future, then embarking on a systematic change of the tribunals, or any change at all, may seem unduly disruptive or unnecessary. Alternatively, if the problem of inconsistent implementation is understood as a matter of principle, then upholding the consistency of the common system requires mitigating the risk of inconsistency to the greatest extent possible, irrespective of the actual frequency or gravity of the problem. In this connection, there may be concerns that even a single occurrence of divergent jurisprudence could create significant financial, legal and administrative challenges and should be prevented. The final element of the analysis relates to whether the solution requires any adjustment to the tribunal systems or can be better addressed through other measures.

89. The preliminary exchanges among the organizations of the United Nations common system, as well as the staff federations and other stakeholders, revealed stark differences of opinion on the nature and gravity of the problem, and on suitable options for addressing the problem. Ultimately, it is for the Member States, through the General Assembly and the governing bodies of the organizations of the United Nations common system, to assess the gravity of the problem of inconsistent implementation of ICSC decisions or recommendations and to determine the necessity of preventing or mitigating the risks of inconsistency, as well as the appropriate degree of mitigation.

90. In reviewing these matters, the attention of the General Assembly is respectfully drawn to the following considerations:

(a) The tribunals are independent and issue judgments that are binding on the organizations that have accepted the jurisdictions of those tribunals. The binding nature of judgments issued by the tribunals is well established and has been notably confirmed

by the International Court of Justice in its advisory opinion of 1954 on the effect of awards of compensation made by the United Nations Administrative Tribunal;<sup>76</sup>

(b) Any universal changes to tribunal systems will have an impact on all organizations and entities that have accepted the jurisdiction of the tribunals. The ILO Administrative Tribunal and the United Nations tribunals have distinct mandates and their jurisdiction has been accepted by different groups of organizations and entities, including organizations outside the United Nations common system. Any option considered needs to be proportionate and tailored to the specific problem that it is intended to address, namely, the objective of promoting consistency in the implementation of ICSC decisions and recommendations in the context of the two independent tribunal systems, without disrupting other areas in which the tribunals currently exercise jurisdiction or the functioning of the organizations concerned;

(c) Any changes to the procedures for the adjudication of cases involving ICSC matters will have an impact on the United Nations common system as a whole. Accordingly, the governing bodies of the specialized agencies will need to be consulted on the review of the jurisdictional set-up of the United Nations common system. This will require the secretariats of the organizations to keep their governing bodies informed of the review as it proceeds and to take into account any observations of the governing bodies as the options are further developed. To this end, some organizations have already brought the review to the attention of their governing bodies.<sup>77</sup> Moreover, any changes to the ILOAT statute will require approval by the International Labour Conference, a body in which each member State is represented by a tripartite delegation composed of representatives of governments, employers and workers;

(d) At the heart of these issues are the concerns of staff members regarding their terms and conditions of service as established by ICSC. Any concerns raised about ICSC decisions and recommendations need to be resolved in accordance with mechanisms and processes that are perceived as legitimate and fair. In this connection, the strong support that many organizations and their staff members have for their respective tribunals needs to be taken into account.

91. A survey of the options considered during the initial review, as well as the preliminary views of stakeholders, are set out below. The options are not mutually exclusive and could operate concurrently. The options fall into four broad categories:

- (a) Maintenance of the status quo;
- (b) Measures unrelated to the structure or jurisdiction of the tribunals;
- (c) Measures involving universal changes to the tribunals;
- (d) Measures involving changes to the adjudication of ICSC matters.

92. In addition to providing input for the report, stakeholders were requested to indicate their preliminary views through their responses to a questionnaire on whether specific options should be further explored. The consolidated responses to the questionnaire are set out in annex III. Many stakeholders stressed that their preliminary views were subject to consideration of the details, once elaborated, of the implementation of each option. The issue of costs and financial implications was a key concern for many stakeholders, with some stressing that their support for any particular option would depend on whether it was, at a minimum, cost-neutral or

<sup>76</sup> *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, p. 47.

<sup>77</sup> See FAO, document CCLM 111/5.

whether the cost-sharing arrangements were acceptable. With respect to annex III, it should be further noted that:

(a) The reference to a specific organization of the United Nations common system refers to the preliminary views of management;

(b) Three staff federations (the Coordinating Committee for International Staff Unions and Associations of the United Nations System, the Federation of International Civil Servants' Associations and the United Nations International Civil Servants Federation) were requested to coordinate inputs from their constituent members and to determine whether the inputs of individual staff representative bodies would be submitted individually or collectively through the staff federations. One staff representative body returned a separate questionnaire and the responses are reflected in annex III;

(c) In view of the complexity of the subject matter, it was not possible to reflect the full views of the stakeholders, nor with any degree of detail. For stakeholders who indicated a preference to set out their separate views in full, those positions can be found at <https://www.un.org/management/initial-review-jurisdictional-setup>.

93. The options are not presented for a decision by the General Assembly at the present stage, but are intended to facilitate a discussion of possible avenues to explore in the future. Any future development of the options will require the full engagement of each organization of the United Nations common system, including through the establishment of a working group of the United Nations System Chief Executives Board for Coordination, as appropriate, and endorsement by their executive heads, as well as consultation with the staff representative bodies. The ILO Administrative Tribunal and the United Nations tribunals, as well as ICSC, will be given ample opportunity to consider and express their views on such options. Finally, consideration will also be given to the views of other stakeholders who may be affected by future proposals, including other entities that have accepted the jurisdiction of the tribunals.

## **A. Maintenance of the status quo**

94. A number of stakeholders were of the view that, given the absence of divergence in the jurisprudence of the tribunals to date and the infrequent incidents of inconsistent implementation, a case for any change had not been made and the status quo should be maintained. Even if future instances of divergence in the jurisprudence were to occur, those stakeholders considered that such a development would provide an insufficient basis on which to introduce any changes to the tribunal systems, irrespective of whether the changes were of general applicability or related only to cases involving ICSC matters.

95. Other stakeholders did not consider maintenance of the status quo to be a viable option. From their point of view, the issue of divergence in the jurisprudence of the tribunals and inconsistency in the implementation of ICSC decisions and recommendations cannot be viewed only in terms of the frequency of incidents. Even one single incident of divergence or inconsistency can have significant financial implications and undermine the confidence of staff members in how ICSC and management exercise their functions.

## **B. Measures unrelated to the structure or jurisdiction of the tribunals**

96. During the initial review, consideration was given to measures that would not require any changes to the structure or jurisdiction of the Tribunals.

### Review of the International Civil Service Commission

97. A number of stakeholders considered that the central problem giving rise to inconsistent implementation of ICSC decisions and recommendations was the Commission itself. They considered that the mechanisms used for setting conditions of service for the United Nations common system needed to be modernized to ensure that they are fit for purpose. They suggested the need for an independent review of ICSC that could examine the functioning, procedures, mechanisms and working methods of the Commission.

98. Reviews of the functioning of ICSC have been conducted on previous occasions:

(a) From 1987 to 1990, the General Assembly asked ICSC and the Secretary-General, together with the Administrative Committee on Coordination, to conduct a review of the functioning of the Commission. The Committee reported on the outcome of the review in July 1991, but ICSC indicated that it “did not fully concur” with the recommendations of the Committee. The Assembly took note of the Committee’s report, expressed its appreciation for improvements already made by ICSC and encouraged ICSC to pursue further improvements in its functioning;<sup>78</sup>

(b) In 1997, the Secretary-General recommended that the General Assembly initiate a review of ICSC. At the request of the Assembly, the Secretary-General developed the terms of reference and composition of a review panel in consultation with ICSC. The terms of reference for the review highlighted three objectives: (a) “strengthening the Commission and maximizing its ability to support the General Assembly in guiding the common system”; (b) considering “ways of better equipping the Commission, within its statute, with tools to implement its tasks, while further ensuring the Commission’s independence, impartiality and effectiveness”; and (c) examining “ways of enhancing the Commission’s ability to reinforce, modernize and thereby strengthen the international civil service to meet new and complex challenges”. The Panel on the Strengthening of the International Civil Service completed its work in 2004. The Commission noted that many of the recommendations of the Panel had already been adopted and that its recommendations relating to the ICSC statute were outside the purview of the Panel. In 2006, the Assembly emphasized that the capacity of ICSC should be strengthened, stressed that its work “shall be given the importance and attention it deserves by the governing bodies of the organizations of the common system” and encouraged it to consider its working methods in consultation with staff representatives and organizations. The Assembly further instituted term limits for the Chair and Vice-Chair of the Commission and identified other criteria for selection.<sup>79</sup>

99. In 2018, ICSC decided to review the consultative process and its working arrangements and established a contact group for the review. The contact group is also discussing “any possible non-compliance or difficulties encountered with the implementation of the Commission’s decisions and related General Assembly resolutions”. The review remains ongoing.

100. Considering how past reviews of ICSC were conducted, the Secretary-General is mindful that any fuller review of the Commission, a subsidiary organ of the General Assembly, would require a mandate from the Assembly and close consultation with the Commission.

<sup>78</sup> See resolution 42/221, sect. VIII; resolution 43/226, sect. II; resolution 44/198, sect. II; resolution 45/241, sect. II; A/46/275; A/46/30; and resolution 46/191 (sect. I).

<sup>79</sup> See resolution 52/12 B; A/53/688; A/54/483; A/55/526; A/57/612; resolution 57/285 (sect. IV); A/59/153; A/59/399; A/59/30 (Vol. II); and resolution 61/239 (sect. III).

**International Civil Service Commission review of tribunal judgments and issuance of guidance**

101. As discussed in section III, there have been two past instances in which the prompt review and issuance of guidance from ICSC following ILOAT judgments facilitated the consistent implementation of ICSC recommendations related to General Service salary scales. In those two cases, while the United Nations was not bound by the ILOAT judgments, it was in a position to adopt the outcomes of the ILOAT judgments as they related to General Service salary scales.

102. In order to facilitate the prompt review of tribunal judgments and the issuance of guidance from ICSC, there could be a general practice that tribunal judgments addressing ICSC matters would be automatically communicated to the Commission secretariat. The ICSC secretariat could develop a procedure for consulting organizations of the United Nations common system and staff representative bodies upon the issuance of a tribunal judgment so that all are aware of the findings of the tribunal. Such consultation could also ensure that ICSC will be made aware of any litigation pending in the other tribunal on the same matter. On the basis of the information received, ICSC can consider whether to revise its decisions and recommendations in a manner that is applicable to all organizations of the United Nations common system or only to the extent required by the tribunal judgment already delivered. Clerical errors requiring the revision of salary scales can be processed more expeditiously by the ICSC secretariat, whereas the resolution of issues that involve policy determinations would require consideration by ICSC itself.

103. Additional challenges arise when the execution of a tribunal judgment requires an adjustment to the implementation of an ICSC decision or recommendation while the litigation involving organizations subject to the jurisdiction of the other tribunal remains pending. While there is no dispute as to the binding nature of the first tribunal's judgment, there are differing views as to the implications of a binding judgment. One view is that ICSC is obliged by the first tribunal judgment to adjust its practices and policies in a manner applicable to the entirety of the United Nations common system. Another view is that the respondent organization subject to the first tribunal's judgment is obliged to pay the contested salary or entitlement in a manner consistent with the findings of that tribunal, with any guidance from ICSC as required to implement the judgment. However, given the litigation pending in the other tribunal, any further action by ICSC to adjust its practices and policies may need to await the final judgment of the other tribunal. A situation of concurrent litigation that concludes at different times will thus result in inconsistent implementation of the ICSC decision or recommendation pending resolution of the litigation. In any event, once the litigation is resolved in both tribunal systems, ICSC can consider what action is appropriate for the entirety of the United Nations common system.

104. While a number of stakeholders saw merit in exploring this option, some raised concerns, noting that it could potentially jeopardize pending litigation. Should this option be further developed, the Secretary-General is mindful that the concurrence of ICSC would be required, given that the development of any process envisaged under this option would require action by ICSC and its secretariat.

**Encouragement of increased exchanges between the International Labour Organization Administrative Tribunal and the United Nations tribunals**

105. A number of stakeholders considered that increased exchanges between the tribunals would contribute to greater awareness and appreciation of the jurisprudence of the other tribunal. Others questioned its usefulness or considered that this measure, while worthy of support, would not address the problem of inconsistent implementation of ICSC decisions and recommendations. Moreover, these efforts

would need to be undertaken with care to avoid a perception of encroachment on the independence of the judges and tribunals.

### **C. Measures involving universal changes to the tribunals**

106. On previous occasions when the General Assembly raised concerns about potential inconsistency in the implementation of ICSC decisions and recommendations, consideration was given to universal changes to the tribunals that would affect how all cases are adjudicated, not just cases involving ICSC matters. Although such changes to the tribunal systems were already considered in previous decades and not pursued, they are nevertheless presented below, so that there is an understanding of the approaches that have been considered in the past and the preliminary views of the stakeholders in exploring these options now.

107. A number of stakeholders did not support the further development of universal changes to the tribunal systems, considering that such changes would be neither warranted nor proportionate to addressing the problem of inconsistent implementation of ICSC decisions and recommendations. Since the adoption of its statute in 1947, the ILO Administrative Tribunal has evolved into a tribunal whose jurisdiction is accepted by 60 organizations. The majority of these organizations are not part of the United Nations common system, and some are not intergovernmental organizations. The United Nations Dispute Tribunal and the United Nations Appeals Tribunal were established in 2009 after many years of consideration by the General Assembly of the Redesign Panel's recommendations and of subsequent proposals developed by the Secretary-General following lengthy and constructive consultations with staff. The United Nations system of justice was further reviewed by the Interim Independent Assessment Panel in 2016. Fundamental changes to the tribunal systems will have a destabilizing effect for all organizations and could introduce uncertainty and disruption for staff members seeking recourse.

108. Moreover, combining the two tribunal systems or establishing a new appellate tribunal mechanism, as discussed below, would mean bringing the total number of staff members served by a single tribunal or appellate mechanism to over 150,000, as the ILO Administrative Tribunal currently serves 73,557 staff members and the United Nations tribunals currently serve 77,920 staff members. In addition to the significant logistical and financial implications, the fundamental changes to the tribunal systems would require lengthy consultations and a substantial transition period to enable the governing bodies of impacted organizations to accept the jurisdiction of a new tribunal or find an alternative judicial mechanism. In the case of the ILO Administrative Tribunal, this would require obtaining the agreement of almost 50 organizations outside the United Nations system towards which the Tribunal has a fundamental responsibility. Therefore, options for fundamental changes to the tribunal systems do not appear to be reasonably practicable in the present context.

109. Other stakeholders reserved their views and some saw merit in exploring certain universal changes, as detailed below.

#### **Abolition of current tribunals and establishment of a new single administrative tribunal**

110. The establishment of a single administrative tribunal, possibly through the amalgamation of the ILO Administrative Tribunal and the United Nations Administrative Tribunal, was explored in 1978 and 1979 but was not pursued by the Secretary-General. Studies on establishing a single administrative tribunal undertaken in previous decades concluded with the recognition that a single tribunal would not

lead to any gains in efficiency and was not feasible. In the ensuing decades, further evolution in the respective jurisdictions of the ILO Administrative Tribunal and the United Nations tribunals, as well as the two-tiered structure in the United Nations system, has added to the complexity of possible unification of the two tribunals.

111. In addition to the stakeholders who did not support exploring this option, a number of stakeholders reserved their views on it. There were no stakeholders who affirmatively supported the further development of this option.

#### **Establishment of a single appellate mechanism**

112. Proposals to establish a single appellate mechanism were previously considered in the context of reviewing the feasibility of a single administrative tribunal and harmonizing the statutes of the ILO Administrative Tribunal and the United Nations Administrative Tribunal. Such proposals, however, were not developed for the purpose of promoting consistency in the implementation of ICSC decisions or recommendations following the issuance of tribunal judgments. While studies on the establishment of an appellate mechanism eventually led to the creation of a two-tiered United Nations tribunal system in 2009, there has not been any further discussion of creating a single appellate mechanism that would cover both the ILO Administrative Tribunal and the United Nations tribunals.

113. The introduction of a single appellate mechanism could be undertaken in different ways: (a) the United Nations Appeals Tribunal could serve as an appellate mechanism for both the United Nations Dispute Tribunal and the ILO Administrative Tribunal; (b) a single review mechanism could serve as a third level of review for the United Nations tribunals and a second level of review for the ILO Administrative Tribunal; or (c) the United Nations Appeals Tribunal could be abolished and replaced with an appellate tribunal that would have jurisdiction over both the ILO Administrative Tribunal and the United Nations Dispute Tribunal. As with the creation of a single administrative tribunal, the establishment of a single appellate mechanism for the United Nations common system would similarly be disproportionate, disruptive and have significant logistical and financial complications. As any version of a single appellate mechanism would create an additional level of review beyond what currently exists for one or both tribunals, there would automatically be additional financial implications and a prolongation of the time frame for the final adjudication of cases.

114. In addition to the stakeholders who did not support exploring this option, a number of stakeholders reserved their views and only one stakeholder indicated that it affirmatively supported the further development of this option.

#### **Harmonization of statutes**

115. From the 1970s to the 2000s, the goal of harmonizing the statutes of the ILO Administrative Tribunal and the United Nations Administrative Tribunal was frequently invoked, in General Assembly resolutions, and in reports of the Joint Inspection Unit issued in 2000 and 2004. The goal of harmonization was focused on issues such as bringing United Nations practices on the selection of judges and ordering remedies (compensation and specific performance) in line with ILO Administrative Tribunal practices and refining rules of procedure for considering cases (for example, by allowing applications for the correction and interpretation of judgments). The statutory amendments proposed in the context of these harmonization efforts were focused on the important objective of improving the overall functioning of the ILO Administrative Tribunal and the United Nations Administrative Tribunal.

116. While harmonizing the statutes of the tribunals may be a positive goal in itself, it is not directly relevant to addressing the problem of inconsistent implementation of ICSC decisions and recommendations. Moreover, the structural differences between the current tribunal systems would make the harmonization of statutes even more challenging, if not unrealistic, given that the United Nations tribunals provide for a first-level process and a second-level appellate review, whereas the ILO Administrative Tribunal acts as a single and final judicial instance.

117. In addition to the stakeholders who did not support exploring this option, a number of stakeholders reserved their views on it. No stakeholders affirmatively supported the further development of this option.

#### **Issuance of advisory opinions by one tribunal after consultation with the other tribunal**

118. Consideration was given to amending the statutes of the ILO Administrative Tribunal and the United Nations Appeals Tribunal to authorize the judges to issue advisory opinions to those international organizations that have accepted their jurisdiction. Executive heads would be able to request advisory opinions on issues of principle, not necessarily limited to ICSC decisions and recommendations. In the preparation of the advisory opinion on an ICSC-related matter, the tribunal would be obliged to consult with the other tribunal. This proposal bears some similarity to the proposal of the Secretary-General in 1984 to empower a review panel to issue advisory opinions on “any general legal question of interest to organizations applying the United Nations common system of staff administration”.<sup>80</sup> The advisory opinions in the 1984 proposal would have been issued by a joint review panel of the United Nations Administrative Tribunal and the ILO Administrative Tribunal, whereas the present proposal is for the ILO Administrative Tribunal and the United Nations Appeals Tribunal to each be empowered to issue advisory opinions. It is also recalled that, in 1980, the ILO Administrative Tribunal itself proposed amending the “rules of both Tribunals providing for either of them to address a formal request to the other for an opinion”.<sup>81</sup>

119. This proposal would, in effect, introduce two new processes: the issuance of an advisory opinion by one tribunal and the obligation to consult with the other tribunal. The likelihood that the tribunals would be aligned with each other as a result of the consultation is uncertain. Moreover, while the advisory opinion might give an indication as to the future direction of the tribunal in a contentious case, it would not be determinative. This process would appear to have limited advantages, in particular as it would add to the workload of the tribunals and lead to delays in adjudicating cases.

120. In addition to the stakeholders who did not support exploring this option, a number reserved their views and two stakeholders indicated that they affirmatively supported the further development of this option.

#### **Recourse to the International Court of Justice**

121. The statutes of the ILO Administrative Tribunal and the United Nations Administrative Tribunal previously included the possibility of challenging the validity of judgments on specific grounds by seeking an advisory opinion from the International Court of Justice. The ILOAT statute provided that the Governing Body of the International Labour Office or the executive board of a respondent organization could request an advisory opinion from the Court.<sup>82</sup> United Nations Administrative

<sup>80</sup> See [A/C.5/39/7](#), paras. 25–28, and annex I, art. 2 *très*.

<sup>81</sup> See International Labour Office, document GB.213/PFA/9/14.

<sup>82</sup> Statute of the ILO Administrative Tribunal, former art. XII and annex.

Tribunal judgments were also subject to review by the Court, at the request of the Committee on Applications for Review of Administrative Tribunal Judgements, a subsidiary organ of the General Assembly composed of Member States. The Secretary-General, Member States and individuals who were the subject of a United Nations Administrative Tribunal judgment could apply to the Committee to seek an advisory opinion from the Court. In total, the Court issued five advisory opinions on two ILOAT judgments, in 1956 and 2012, and on three United Nations Administrative Tribunal judgments, in 1973, 1982 and 1987.<sup>83</sup>

122. In 1994, at the request of the General Assembly, the Secretary-General conducted a review of the procedure for recourse to the International Court of Justice and concluded that it “has not proved to be a constructive and useful element of the appeal system available within the Secretariat”.<sup>84</sup> The Assembly deleted the procedure from the statute in 1995. The process for the Court’s review of ILOAT judgments was criticized by the Court itself for failing to respect the principle of equal access to courts, as the review could only be requested by the organizations and not by staff members. The International Labour Conference deleted the procedure from the ILOAT statute in 2016.<sup>85</sup>

123. Recourse to the International Court of Justice was not established in the past as a means of promoting consistency in the implementation of ICSC decisions and recommendations. It is discussed here so that there is awareness of what this recourse entailed and why it was eliminated. The involvement of Court judges in reviewing ICSC matters appears at odds with their general role in adjudicating inter-State and public international law disputes.

124. In addition to the stakeholders who did not support exploring this option, a number of stakeholders reserved their views on it. No stakeholders affirmatively supported the further development of this option.

#### **D. Measures involving changes to the adjudication of cases involving International Civil Service Commission matters**

125. Promoting consistency in the implementation of ICSC decisions and recommendations does not necessarily require universal changes to the structure or jurisdiction of the ILO Administrative Tribunal and the United Nations tribunals. During the review, consideration was given to options that would change how challenges to the implementation of ICSC decisions and recommendations are adjudicated.

126. One set of options was related to the establishment of a joint chamber composed of Administrative Tribunal and United Nations Appeals Tribunal judges, which would be responsible for reviewing ICSC matters only. This approach would leave the other functions of the ILO Administrative Tribunal and the United Nations tribunals intact.

127. At present, the statutes of the ILO Administrative Tribunal and the United Nations Appeals Tribunal provide that cases are normally decided by three judges, but may be decided by the entire tribunal, where warranted by the significance of the case.<sup>86</sup> The joint chamber could constitute a further variation of this approach, as an augmented judicial chamber within the structure of the ILO Administrative Tribunal and the United Nations Appeals Tribunal. The joint chamber could be considered an

<sup>83</sup> See International Labour Office, document GB.326/PFA/12/1; and [A/C.6/49/2](#).

<sup>84</sup> See [A/C.6/49/2](#), paras. 16–18, and 37. See also General Assembly decision 48/415 (in [A/48/49](#)).

<sup>85</sup> See General Assembly resolution [50/54](#); and ILO, resolution concerning the Statute of the Administrative Tribunal of the International Labour Organization, 7 June 2016.

<sup>86</sup> Statute of the ILO Administrative Tribunal, art. III (3); and statute of the Appeals Tribunal, art. 10 (1).

integral part of the two tribunals, and the statutes would need to be revised to reflect this status.

128. The joint chamber could potentially have a role in reviewing ICSC matters at only one stage or at multiple stages of adjudication, as outlined below:

(a) **Interpretative ruling.** The joint chamber could be authorized to review the legality of ICSC decisions and recommendations before they are adopted or implemented and to issue interpretative rulings. This option would have the advantage of allowing questions about the legality of ICSC decisions and recommendations to be raised in advance and resolved. If the joint chamber were to identify legal flaws, ICSC could address such flaws before a decision or recommendation is adopted or implemented across the United Nations common system. This approach would have the benefit of avoiding the substantial cost of retroactive “invalidation” of ICSC decisions or recommendations. It is not envisaged that all ICSC decisions and recommendations should be subject to an interpretative ruling prior to adoption and implementation. Accordingly, a further role for the joint chamber through the issuance of preliminary rulings may be useful once contentious cases are filed;

(b) **Preliminary rulings to guide the adjudication of contentious cases.** When the ILO Administrative Tribunal or the relevant United Nations tribunal<sup>87</sup> receives a case that requires reviewing the legality of the implementation of an ICSC decision or recommendation, the tribunal could refer the question regarding the legality of the implementation of the ICSC matter to the joint chamber for a preliminary ruling. Such a referral would result in the stay of any proceedings before either tribunal that may be affected by the outcome of the preliminary ruling. The tribunal submitting the request for a preliminary ruling would formulate the specific question for which a preliminary ruling is sought, which could be subject to interpretation by the joint chamber. Once issued, the preliminary ruling would provide guidance to the requesting tribunal in the adjudication of the specific case that gave rise to the referral, as well as in any other case in which the same ICSC decision or recommendation is challenged, irrespective of the tribunal in which the case is filed. Such authoritative guidance, although advisory in nature, should be given due consideration by the tribunals;

(c) **Full adjudication of contentious cases.** As an alternative to issuing preliminary rulings only, the joint chamber could be given exclusive jurisdiction to adjudicate any case in which the legality of the implementation of an ICSC decision or recommendation arises. When the ILO Administrative Tribunal or the relevant United Nations tribunal receives a case that requires reviewing the legality of the implementation of an ICSC decision or recommendation, the entire case would be referred to the joint chamber to issue a judgment. As the joint chamber would essentially be operating as a separate tribunal with exclusive jurisdiction over ICSC matters and accepting cases filed by staff members of all organizations of the United Nations common system, the caseload for the joint chamber could be substantial;

(d) **Appellate ruling.** The joint chamber could be authorized to review divergent judgments on the implementation of ICSC decisions and recommendations issued by the ILO Administrative Tribunal and the United Nations Appeals Tribunal. Under this approach, challenges to the implementation of ICSC decisions and recommendations would continue to be filed separately with the ILO Administrative Tribunal and the United Nations tribunals and adjudicated by those tribunals. This approach would primarily be useful in addressing the issue of conflicting judgments delivered by the

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<sup>87</sup> The relevant United Nations tribunal would be the United Nations Dispute Tribunal; however, in the case of organizations that have only accepted the jurisdiction of the United Nations Appeals Tribunal, the relevant United Nations tribunal would be the United Nations Appeals Tribunal.

existing tribunals, which, as discussed above, has not occurred during the period under consideration.

129. If the option of the joint chamber is to be developed further, several aspects would need to be thoroughly considered and elaborated upon. These aspects include, but are not limited to:

- (a) Scope of competence of the joint chamber;
- (b) Composition of the joint chamber, including the number of judges and the involvement of the Presidents of the tribunals;
- (c) Procedures for referral to the joint chamber, including the discretionary or mandatory nature of referrals;
- (d) Costs of operating the joint chamber (seat, support and hearings) and cost-sharing arrangements;
- (e) Rules for decision-making by the joint chamber, including in the case of a divided chamber;
- (f) Legal authority of interpretative and preliminary rulings, whether advisory or binding in nature;
- (g) Standing of executive heads, staff, staff representative bodies and ICSC to request an interpretative or preliminary ruling and to intervene in proceedings before the joint chamber, as well as procedures for giving adequate notice to parties;
- (h) Duration of proceedings and time frames for the issuance of preliminary, interpretative or appellate rulings, and possibilities for expedited review.

130. A number of stakeholders expressed concern that proceedings before the joint chamber could either lead to delays and prolong the finalization of ICSC decisions and recommendations or create additional layers of adjudication. Some considered that the joint chamber would not be effective in ensuring consistency in the implementation of ICSC decisions and recommendations if its rulings were only advisory, while others were of the view that treating the rulings of the joint chamber as binding would encroach on the authority of the respective tribunals. The issue of costs was raised by many stakeholders, as well as related questions about how the costs would be allocated. Any further development of the joint chamber option would therefore need to address these concerns.

131. Stakeholders who supported the further development of the joint chamber proposal considered that it could provide a less disruptive and more cost-effective solution than pursuing fundamental changes to the structure and jurisdiction of the tribunals. However, authorizing the joint chamber to conduct a full adjudication of cases, as discussed in paragraph 128 (c) above, would essentially create a third tribunal with a potentially substantial caseload and attendant costs. Moreover, giving the joint chamber the authority to review appeals against ILO Administrative Tribunal and United Nations Appeals Tribunal judgments, as discussed in paragraph 128 (d) above, would create an additional level of review (and, in the case of the United Nations tribunals, a third level of review), thereby prolonging the period of uncertainty for staff members and organizations about the lawfulness of an ICSC decision or recommendation.

132. A number of stakeholders opposed exploring the option of the joint chamber, in any permutation, as they considered that such an approach would be disproportionate and misconceived in view of the absence of divergence in the jurisprudence of the tribunals to date, as well as the infrequent incidents of inconsistent implementation of ICSC decisions and recommendations and the availability of other measures to

address this issue. A number of stakeholders reserved their views on the options related to the joint chamber.

## **V. Conclusion**

**133. The General Assembly is requested to take note of the present report and to provide any observations or guidance to the Secretary-General on the further development of any of the options discussed in section IV of the report.**

## Annex I

### Comments of the United Nations Dispute Tribunal judges

1. The United Nations Dispute Tribunal judges welcome the opportunity to offer their comments on the draft report on the initial review of the jurisdictional set-up of the United Nations common system and recall that involving the judiciary in the debate regarding any proposed legislation that might affect its operation, whether procedural or substantive, is in line with international standards and national best practices.
2. The United Nations Dispute Tribunal judges find the report well researched, well structured and insightful.
3. Regarding general assumptions, the United Nations Dispute Tribunal judges endorse the proposition in the report of approaching the problem as one of inconsistent implementation of International Civil Service Commission (ICSC) decisions and recommendations across the United Nations common system, rather than one of divergence in the jurisprudence (see para. 88 of the report). The judges propose that, if the problem of inconsistent implementation is understood as a matter of principle, then upholding the consistency of the common system requires undertaking mitigating actions on different levels. To this end, the judges echo those stakeholders who point to the need for a review of ICSC (see para. 97). In this regard, for the prevention of divergence in jurisprudence, the quality of ICSC-related regulation is key. It must be up-to-date, unambiguous, accessible and transparent. This is essential with respect to the delineation of statutory competencies and highly desirable with regard to parameters guiding ICSC decisions.
4. On the other hand, the United Nations Dispute Tribunal judges point out that possible solutions to overcome the effects of diverging jurisprudence include: voluntary implementation by ICSC of a favourable outcome of a judgment with regard to all organizations applying the common system; and/or the intervention of the General Assembly to restore consistency through legislative means. Given that, as noted in the report, the divergence does not arise often, recourse to these ad hoc options should be given due consideration as a priority over pursuing reconfiguration of the tribunals.
5. One inaccuracy identified so far in the report concerns a statement in the descriptive part on the scope of judicial review. It is correctly noted in the report (see para. 73) that, strictly speaking, the tribunals have reviewed the implementation of the challenged ICSC decisions or recommendations by the executive head of the respective organization. The report would, however, benefit from clarification (for example, in para. 90 (a)) that the tribunals exercise jurisdiction over administrative decisions taken by executive heads in precise individual cases, whereas judicial review of the legality of ICSC decisions has only been incidental to this purpose.
6. The tribunals have no power to invalidate an ICSC decision akin to a constitutional court and, thus, the result of the review of ICSC decisions has never been included in the operative part of any judgment. Nor can the tribunals rescind the implementing of administrative decisions with the effect extending over non-applicants, even within the same organization. It is important to note this limitation in order to understand that a challenge to the consistency of the common system not only is posed by the existence of two independent tribunals, but is a corollary of the existence of any tribunal, whose judgments have effect only in relation to individual applicants, whereas any broader implementation of a rule expressed by a tribunal in a given case is largely left to the discretion of ICSC or the executive heads of the organizations (see paras. 86 and 102–104).

7. It is further ascertained in the report (see para. 78) that “the parameters of judicial review and their applicability to decisions and recommendations of ICSC are the subject of ongoing litigation before the United Nations Dispute Tribunal and the [United Nations] Appeals Tribunal”. The United Nations Dispute Tribunal judges observe that the pendency of such litigation may occur before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as well as the International Labour Organization (ILO) Administrative Tribunal, at any given time, this pendency being determined by the content of the pleadings alone and thus impossible to predict. As such, it should not be assumed in the report that there will not be any case pending at the moment of its release. Consequently, it would seem necessary to present the state of jurisprudence such as it stands to date. It would thus be important to include in the report information stating that, following a brief loss of clarity in its position as to the scope of review of cases involving regulatory acts, the United Nations Appeals Tribunal has reaffirmed its jurisdiction along the lines adopted by the ILO Administrative Tribunal, the United Nations Administrative Tribunal and the early United Nations Appeals Tribunal (judgments No. 2018-UNAT-840 *Lloret-Alcaniz et al. v. Secretary-General* and No. 2018-UNAT-841 *Quijano-Evans et al. v. Secretary-General*). In the unlikely event that the latter position be revisited, namely, if the United Nations Appeals Tribunal refuses jurisdiction over cases indirectly involving ICSC decisions, the position of the United Nations tribunals would by default be that of non-receivability, and the report and exercises contemplated in it would become pointless.

8. However, the issue illustrates that divergence may occur not only between different tribunals but also within the same tribunal over time or in parallel between different panels.

9. With regard to the options discussed, the United Nations Dispute Tribunal judges concur that a process to facilitate the prompt review of tribunal judgments and the issuance of guidance from ICSC should be further developed (see para. 104).

10. The United Nations Dispute Tribunal judges support increased exchanges between the tribunals (see para. 105), noting with concern that, so far, little support has been received from the Office of Administration of Justice to facilitate such exchanges. The budget of the United Nations tribunals has been depleted, gradually precluding the participation of United Nations judges in the European Public Law Organization seminars; the judges were refused time off for attending seminars and were prevented from participating in training events, even at no cost to the Office; moreover, even meetings in person of the judges have been limited. If increased exchanges are to be promoted, the budget ought to reflect it.

11. The United Nations Dispute Tribunal judges are in agreement that universal changes to the tribunals are not a viable option, for the reasons stated in the report (see paras. 106–114).

12. The United Nations Dispute Tribunal judges agree that harmonizing the statutes of the tribunals is not directly relevant to addressing the problem of inconsistent implementation of ICSC decisions (see para. 115). That said, harmonization of the statutes may indirectly serve this goal if it could uniformly codify certain legal categories: the notion of a reviewable administrative decision; sources of law binding on the tribunals; the concept of acquired rights and, possibly, some other areas of divergence, such as the availability of the remedial reinstatement of an employee or the standard of review in disciplinary cases.

13. The United Nations Dispute Tribunal judges are not in favour of advisory opinions (see paras. 118–120), for the reasons stated in the report (see para. 119). They further note that exercising an advisory role is not consistent with the function of the tribunals in any system based on the separation of power principle. Moreover,

participation in advisory panels could limit the availability of these judges for the subsequent hearing of similar cases, owing to potential disqualification. The judges expect the Organization to have sufficient legal expertise to ensure a priori advice to ICSC, such as through the Secretariat. Alternatively, with regard to the proposals for reforming the work of ICSC (see paras. 97–100), it could be suggested that ICSC itself be composed so as to ensure the availability of legal expertise in the relevant field, in addition to other necessary substantive knowledge, or have resort to committees so equipped.

14. The United Nations Dispute Tribunal judges do not support recourse to the International Court of Justice for reasons mentioned in the report (see paras. 122 and 123).

15. An option that seems to have attracted the most attention from the stakeholders is that of a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal (see para. 128) responsible for “reviewing ICSC matters only”. Given the early stage of the articulation of this option, the United Nations Dispute Tribunal judges offer only their preliminary views.

16. The United Nations Dispute Tribunal judges consider that, prior to developing any variation of this option any further, it would be necessary to have a common understanding of “ICSC matters only”. It would seem that options discussed in para. 128 (a) and (b) contemplate pronouncing on the legality of the acts of ICSC and those of the General Assembly in which the latter either obligates ICSC to pursue certain directions or adopt certain measures or acts upon ICSC recommendations. As mentioned above, at present, the tribunals’ review of ICSC decisions is only incidental to the examination of the legality of individual administrative decisions. Should options (a) and (b) be pursued, crafting the mandate of the joint chamber would need to be done finely as the joint chamber would go beyond the merging of judicial personnel for selected cases from the tribunals’ docket and would become a tribunal exercising substantively different jurisdiction over regulatory acts.

17. Option (a) does not disclose what body of laws would be subject to interpretative rulings. Usually, the construct of interpretative rulings is used to develop the contours of more general norms expressed in fundamental and hierarchically superior acts, such as treaties and constitutions. At present, litigation in “ICSC matters” involving interpretation of its statute is extremely rare. Rather, litigation usually concerns ICSC pronouncements on the conditions of civil service and their conformity with “acquired rights” as per staff regulation 12.1 and/or the direction provided in Article 101 of the Charter of the United Nations that at the United Nations Secretariat, conditions of service secure the highest standards of efficiency, competence and integrity. The paucity of regulation does not provide much guidance, leaving the matter to divergent interpretations. A typical request for an interpretative ruling could thus be imagined to read, roughly, along the following lines: “Whether or not the acquired rights per staff regulation 12.1 allow lowering the educational grant from 80 per cent to 50 per cent reimbursement of actual costs.” The “interpretative rulings” would be, in fact, an ad hoc examination of the ICSC policy decision, automatically exposed to current politics and, on the technical level, possibly involving complex financial and statistical calculations.

18. The United Nations Dispute Tribunal judges, in any event, do not support the concept of a joint chamber issuing interpretative rulings before the ICSC decisions and recommendations are adopted or implemented. The question automatically arises as to who would have the legitimacy to request an interpretative ruling on a decision that has not yet been taken or implemented. However, assuming such a role would turn the joint chamber into an advisory body and potentially compromise the adjudicative function of the tribunals.

19. The United Nations Dispute Tribunal judges further suggest considering whether the desired effect could not be better achieved by developing the notion of acquired rights, as well as the parameters of permissible ICSC amendments to conditions of civil service, in the legislation: staff regulations, the tribunals' statutes and the ICSC statute. Having these parameters legally and a priori defined, ICSC would have a standard to abide by, the effect of which the tribunals (or the joint chamber), consistent with their proper judicial function, could review for compliance with an abstract rule. This would replace the current practice of construing the standards on a case-by-case basis and, at times, inconsistently between the two tribunals.

20. Regarding option (b), which foresees preliminary rulings by the joint chamber, the United Nations Dispute Tribunal judges find it more viable. They posit, however, that involving a joint chamber in the issuance of guidance advisory in nature would be neither efficient nor consistent with the independence of the tribunals. Should there be a preliminary ruling, it would need to be a declaratory judgment in the matter of legality of a regulatory act that gave rise to a dispute before the tribunal of original jurisdiction, which would be binding on both tribunals for all pending and future cases. Should no illegality be found, the tribunal of original jurisdiction would proceed to examine the propriety of implementation in the case before it. Should the joint chamber find the illegality of a regulatory act, the Tribunal of original jurisdiction would determine the consequences for the case before it. The question of a follow-up by ICSC itself would need to be further developed.

21. The United Nations Dispute Tribunal judges consider that full adjudication of contentious cases by the joint chamber as per option (c) is not feasible. Cases involving challenges to regulatory acts may not arise often, but they as a rule involve multiple (hundreds of) applicants. The sheer volume of work associated with administratively processing a great number of applications and ruling on the particulars of each of them would significantly burden the joint chamber, delay the outcome of the main matter and increase costs associated with the sitting of the joint chamber. Individual cases, moreover, may include pleadings unrelated to the ICSC decision or recommendation and require adjudication by the tribunal of original jurisdiction anyway. Furthermore, it must be noted that the full adjudication of contentious cases by the joint chamber would deprive applicants who fall under the jurisdiction of the United Nations tribunals of a two-tier review.

22. The United Nations Dispute Tribunal judges consider that option (d), laying out an appellate review of "divergent judgments on the implementation of ICSC decisions and recommendations issued by the ILO Administrative Tribunal and the United Nations Appeals Tribunal", does not seem well conceived, as it is inconsistent with the concept of appellate review.

23. Individual judgments, in order to trigger appellate review, must be appealed by the parties within deadlines. There is no way of predicting if, and when, the other tribunal may be seized of a case involving a similar matter, what will be the state of the pleadings before it, what evidence it will examine and when it will arrive at a judgment. Meanwhile, the postulate of legal certainty requires a final resolution in the pending case. Moreover, the basis of an appeal is error of fact and law, and not inconsistency with another, non-binding judgment. The applicants have no legal interest in consistency; they have interest in a favourable resolution. Likewise, the respondents' legal interest is in defending a lawful outcome and not in enforcing consistency in the jurisprudence.

24. Should the issue contemplated under option (d) concern adding another layer of review over the ILO Administrative Tribunal and United Nations Appeals Tribunal judgments, the jurisdiction of such a joint chamber would need to be triggered by a

complaint alleging an error of law, filed by a legitimate participant in an individual case and within a certain deadline, notwithstanding the proceedings before the other tribunal. Relevant statutes, however, could provide for a possibility of suspending all proceedings involving the appealed matter until the joint chamber judgment is handed down and for its binding force on both tribunals. While such a solution is, in principle, a thinkable one, the question of efficiency arises again: in addition to the fact that in this scenario the appeal would need to encompass all the particulars of the case, it would also present a third review in the matters before the United Nations tribunals, after all the investment of time and cost in the preceding ones. In accordance with the principle that it is better to prevent than to treat, the option of preliminary rulings appears more advisable.

## Conclusion

25. The United Nations Dispute Tribunal judges:

(a) Stress the need to develop relevant legislation in order to clearly set out ICSC competencies and desirable standards to guide its decisions and recommendations and thereby limit the scope of divergence in ICSC-related disputes;

(b) Propose to consider voluntary compliance by ICSC with a more favourable judgment and ad hoc legislative intervention by the General Assembly as means of restoring the consistency of the common system as a priority over intervening in the institutional fabric of the tribunals;

(c) Support exchanges between the tribunals and suggest that the Organization facilitate such exchanges;

(d) Ultimately, propose that the only option worth considering further is the one of the joint chamber with competence to issue binding preliminary rulings on the legality of regulatory acts of ICSC.

## Annex II

### **Organizations that accept the jurisdiction of the International Labour Organization Administrative Tribunal, as at 1 November 2020**

1. Advisory Centre on World Trade Organization Law
2. African Training and Research Centre in Administration for Development
3. Association of Southeast Asian Nations plus China, Japan and the Republic of Korea (ASEAN+3) Macroeconomic Research Office
4. Bioversity International (formerly International Plant Genetic Resources Institute)
5. Bureau international des poids et mesures
6. Centre of Excellence in Finance
7. Consortium of International Agricultural Research Centers (CGIAR)
8. Court of Justice of the European Free Trade Association
9. Energy Charter Conference
10. European and Mediterranean Plant Protection Organization
11. European Free Trade Association
12. European Free Trade Association Surveillance Authority
13. European Molecular Biology Laboratory
14. European Organization for Nuclear Research (CERN)
15. European Organization for the Safety of Air Navigation
16. European Patent Office
17. European Southern Observatory
18. European Telecommunications Satellite Organization
19. Food and Agriculture Organization of the United Nations, including the World Food Programme
20. Global Community Engagement and Resilience Fund
21. Global Crop Diversity Trust
22. Global Fund to Fight AIDS, Tuberculosis and Malaria
23. Global Green Growth Institute
24. Green Climate Fund
25. International Atomic Energy Agency
26. International Centre for Genetic Engineering and Biotechnology
27. International Centre for the Registration of Serials
28. International Centre for the Study of the Preservation and Restoration of Cultural Property
29. International Cocoa Organization
30. International Criminal Court

31. International Criminal Police Organization (INTERPOL)
32. International Federation of Red Cross and Red Crescent Societies
33. International Fund for Agricultural Development
34. International Fusion Energy Organization
35. International Hydrographic Organization
36. International Institute for Democracy and Electoral Assistance
37. International Labour Organization
38. International Olive Council
39. International Organisation of Vine and Wine
40. International Organization for Legal Metrology
41. International Organization for Migration
42. International Organization for the Development of Fisheries in Europe (formerly International Organization for the Development of Fisheries in Central and Eastern Europe)
43. International Telecommunication Union
44. International Union for the Protection of New Varieties of Plants
45. Inter-Parliamentary Union
46. Organisation for the Prohibition of Chemical Weapons
47. Organization of African, Caribbean and Pacific States
48. Pacific Community
49. Pan American Health Organization
50. Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
51. South Centre
52. United Nations Educational, Scientific and Cultural Organization
53. United Nations Industrial Development Organization
54. Universal Postal Union
55. World Customs Organization
56. World Health Organization, including the Joint United Nations Programme on HIV/AIDS
57. World Intellectual Property Organization
58. World Organization for Animal Health (formerly International Office of Epizootics)
59. World Tourism Organization
60. World Trade Organization

## Annex III

### Preliminary views on options for promoting consistency in the implementation of International Civil Service Commission decisions and recommendations in the context of two independent tribunal systems

The table below reflects the preliminary views of stakeholders who responded to a questionnaire on whether each option should be explored, as well as those stakeholders who reserved their views with respect to all options (United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and World Tourism Organization). The World Intellectual Property Organization declined to complete the questionnaire and its views are reflected in a separate response by its Director General as set out at <https://www.un.org/management/initial-review-jurisdictional-setup>. The United Nations Educational, Scientific and Cultural Organization also declined to return the questionnaire as it considered the discussion of the options to be premature.

<i>Whether the option below should be explored</i>		<i>Yes</i>	<i>No</i>	<i>Views reserved</i>
<b>A Maintenance of the status quo</b>				
1.	Maintenance of the status quo without any changes to the structure or jurisdiction of the tribunals	FAO, IAEA, IOM, ITLOS, ITU, UNFPA, UNICEF, UNIDO, WHO <i>Staff:</i> CCISUA, FICSA, UNISERV, WIPO Staff Council	United Nations, ILO, ICAO, IMO, ITC, UNDP, UNOPS, UNRWA, UPU, WFP	IFAD, ISA, OPCW, UNHCR, UN-Women, UNWTO, WMO, WTO
<b>B. Measures unrelated to the structure or jurisdiction of the tribunals</b>				
2.	Review of ICSC	ILO, FAO, IAEA, IMO, IOM, ITU, UNHCR, UNICEF, UNIDO, UNRWA, WHO, WMO <i>Staff:</i> CCISUA, WIPO Staff Council	United Nations, IFAD, UNOPS <i>Staff:</i> FICSA	ICAO, ISA, ITC, ITLOS, OPCW, UNDP, UNFPA, UN-Women, UNWTO, UPU, WFP, WTO <i>Staff:</i> UNISERV
3.	ICSC review of tribunal judgments and issuance of guidance	United Nations, ILO, IAEA, IMO, IOM, ISA, ITLOS, UNDP, UNFPA, UNICEF, UNIDO, UNOPS, WFP <i>Staff:</i> FICSA	OPCW <i>Staff:</i> CCISUA, UNISERV	FAO, ICAO, IFAD, ITC, ITU, UNHCR, UNRWA, UN-Women, UNWTO, UPU, WHO, WMO, WTO <i>Staff:</i> WIPO Staff Council
4.	Encouragement of increased exchanges between the ILO Administrative Tribunal and the United Nations tribunals	United Nations, ILO, FAO, IAEA, ICAO, IFAD, IMO, IOM, ISA, ITC, ITU, OPCW, UNDP, UNHCR, UNICEF, UNIDO, UNOPS, UNRWA, UPU, WFP, WHO, WMO, WTO <i>Staff:</i> FICSA, UNISERV		ITLOS, UNFPA, UN-Women, UNWTO <i>Staff:</i> CCISUA, WIPO Staff Council

<i>Whether the option below should be explored</i>		<i>Yes</i>	<i>No</i>	<i>Views reserved</i>
<b>C. Measures involving universal changes to the tribunals</b>				
5.	Abolition of current tribunals and establishment of a new single administrative tribunal		United Nations, ILO, FAO, IAEA, ICAO, IMO, IOM, ISA, ITLOS, ITU, OPCW, UNDP, UNFPA, UNHCR, UNICEF, UNIDO, UNOPS, UNRWA  <i>Staff:</i> CCISUA, FICSA, UNISERV, WIPO Staff Council	IFAD, ITC, UN-Women, UNWTO, UPU, WFP, WHO, WMO, WTO
6.	Establishment of a single appellate mechanism	ITC	United Nations, ILO, FAO, IAEA, ICAO, IMO, ISA, ITLOS, ITU, OPCW, UNDP, UNHCR, UNICEF, UNIDO, UNOPS, UPU, WFP, WHO  <i>Staff:</i> UNISERV, WIPO Staff Council	IFAD, IOM, UNFPA, UNRWA, UN-Women, UNWTO, WMO, WTO  <i>Staff:</i> CCISUA, FICSA
7.	Harmonization of statutes		United Nations, ILO, FAO, IAEA, ICAO, IMO, IOM, ISA, ITLOS, ITU, OPCW, UNDP, UNHCR, UNICEF, UNIDO, UNOPS, WFP, WHO  <i>Staff:</i> UNISERV, WIPO Staff Council	IFAD, ITC, UNFPA, UNRWA, UN-Women, UNWTO, UPU, WMO, WTO  <i>Staff:</i> CCISUA, FICSA
8.	Issuance of advisory opinion by one tribunal after consultation with the other tribunal	IAEA, UNFPA	United Nations, ILO, FAO, IMO, IOM, ISA, ITC, ITLOS, ITU, UNDP, UNICEF, UNIDO, UNOPS, UNRWA, UPU, WHO  <i>Staff:</i> CCISUA, FICSA, UNISERV, WIPO Staff Council	ICAO, IFAD, OPCW, UNHCR, UN-Women, UNWTO, WFP, WMO, WTO
9.	Recourse to the International Court of Justice		United Nations, ILO, FAO, IAEA, ICAO, IFAD, IMO, IOM, ITC, ITLOS, ITU, OPCW, UNDP, UNFPA, UNHCR, UNICEF, UNIDO, UNOPS, UNRWA, WFP, WHO	ISA, UN-Women, UNWTO, UPU, WMO, WTO

<i>Whether the option below should be explored</i>		<i>Yes</i>	<i>No</i>	<i>Views reserved</i>
			<i>Staff:</i> CCISUA, FICSA, UNISERV, WIPO Staff Council	
<b>D. Measures involving changes to the adjudication of cases involving ICSC matters</b>				
10. a.	Establishment of a joint chamber to issue interpretative rulings	United Nations, ILO, IAEA, ICAO, IMO, ISA, UNDP, UNOPS, UNRWA, UPU, WFP	FAO, ITC, ITU, OPCW, UNICEF, UNIDO, WHO <i>Staff:</i> CCISUA, FICSA	IFAD, IOM, ITLOS, UNFPA, UNHCR, UN-Women, UNWTO, WMO, WTO  <i>Staff:</i> UNISERV, WIPO Staff Council
b.	Establishment of a joint chamber to issue preliminary rulings	United Nations, ILO, IAEA, ICAO, IFAD, IMO, ISA, ITC, UNDP, UNOPS, UNRWA, WFP	FAO, IOM, ITU, UNICEF, UNIDO, WHO	ITLOS, OPCW, UNFPA, UNHCR, UN-Women, UNWTO, UPU, WMO, WTO  <i>Staff:</i> CCISUA, FICSA, UNISERV, WIPO Staff Council
c.	Establishment of a joint chamber to conduct full adjudication of contentious cases	IAEA, ICAO, IFAD, UNICEF, UNRWA	United Nations, ILO, FAO, IMO, IOM, ISA, ITLOS, ITU, OPCW, UNFPA, UNIDO, UNOPS, WHO  <i>Staff:</i> FICSA, UNISERV, WIPO Staff Council	ITC, UNDP, UNHCR, UN-Women, UNWTO, UPU, WFP, WMO, WTO  <i>Staff:</i> CCISUA
d.	Establishment of a joint chamber to issue appellate rulings	IAEA, IMO, ITC, UNRWA	United Nations, ILO, FAO, ICAO, IOM, ISA, ITLOS, ITU, OPCW, UNDP, UNICEF, UNIDO, UNOPS, WFP, WHO  <i>Staff:</i> UNISERV, WIPO Staff Council	IFAD, UNFPA, UNHCR, UN-Women, UNWTO, UPU, WMO, WTO  <i>Staff:</i> CCISUA, FICSA

*Abbreviations:* CCISUA, Coordinating Committee for International Staff Unions and Associations of the United Nations System; FAO, Food and Agriculture Organization of the United Nations; FICSA, Federation of International Civil Servants' Associations; IAEA, International Atomic Energy Agency; ICAO, International Civil Aviation Organization; ICSC, International Civil Service Commission; IFAD, International Fund for Agricultural Development; ILO, International Labour Organization; IMO, International Maritime Organization; IOM, International Organization for Migration; ISA, International Seabed Authority; ITC, International Trade Centre; ITLOS, International Tribunal for the Law of the Sea; ITU, International Telecommunication Union; OPCW, Organisation for the Prohibition of Chemical Weapons; UNDP, United Nations Development Programme; UNFPA, United Nations Population Fund; UNHCR, Office of the United Nations High Commissioner for Refugees; UNICEF, United Nations Children's Fund; UNIDO, United Nations Industrial Development Organization; UNISERV, United Nations International Civil Servants Federation; UNOPS, United Nations Office for Project Services; UNRWA, United Nations Relief and Works Agency for Palestine Refugees in the Near East; UN-Women, United Nations Entity for Gender Equality and the Empowerment of Women; UNWTO, World Tourism Organization; UPU, Universal Postal Union; WFP, World Food Programme; WHO, World Health Organization; WIPO, World Intellectual Property Organization; WMO, World Meteorological Organization; WTO, World Trade Organization.